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# MEDIEVAL POLITICAL IDEAS



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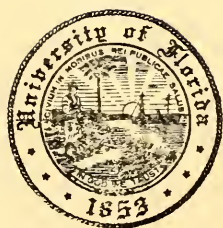
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## Chapter Six

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### THE STRUCTURE OF AUTHORITY IN THE CHURCH

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THE strongest side of medieval political theory was that which defined what political organization ought to accomplish; its weakest side was that which dealt with the type of organization that would make such accomplishment more probable. As we have already observed in tracing the development of opinion on the structure of secular authority, medieval thought in this field never attained a systematic reconciliation of the demands emerging from medieval experience with the concepts derived from tradition and deductive speculation; in fact, it never looked quite squarely at the problem. Accordingly, in the history of political thought a particular interest attaches to the theories that developed about the government of the church. In the doctrine of the plenitude of papal power, ideas common to both ecclesiastical and secular theory were early carried to a systematic extreme which secular theory rarely emulated. But papal absolutism had to face, in the problem of the Great Schism, a test more drastic and long continued than any that ever menaced the corresponding view of secular kingship. Thus for a time the question of the means by which good government in the church might be secured became a question of compelling practical importance for many excellent minds. Its challenge required a re-examination of the basic principles of all political organization and brought into comparatively explicit statement ideas that in the realm of secular theory remained vague suggestions. And although in the end the promise of conciliar theory was frustrated both by its own intellectual difficulties and by the actual

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trends of developing pressures and institutional relationships, that frustration has its own significance and fascination.

The church entered the Middle Ages as a complex structure of many offices whose mutual relations of power were not clearly defined. Of these the papacy, like the secular monarchy, offered itself as the first obvious nucleus upon which doctrines of concentrated power might form, but with even greater ease than in the case of the secular kingship. For, throughout the Middle Ages, its claim to direct divine institution through Christ's commission to Peter was rarely disputed; the tremendous terms in which the keys of heaven had been granted to Peter argued a virtually limitless authority; it was easy to deduce from the lofty dignity of the Vicar of Christ an unconditioned duty of obedience and the doctrine that the pope, like the 'spiritual man' of the Scriptures, could 'judge all and be judged by none.'<sup>1</sup> Moreover, the influence of Roman law could work with more effect on the law of the church than on that of secular kingdoms. Although all levels of the hierarchy were hallowed by tradition, precedents—genuine or accepted as such—for papal intervention in every sphere of ecclesiastical activity were laid down in the confused period that preceded the systematization of the canon law; and when the canonists in the twelfth century began their work of codification and analysis, the materials for a theory of papal omnicompetence were already available to them. Unlike the lawyers who tried to adapt Roman concepts to the structure of the secular kingdoms, the canonists were not hampered by feudal conceptions of divided dominion; the church was already an organized structure of offices; long before the secular kingdoms it looked like a state, though it was not till the early fourteenth century that James of Viterbo first defined it as a *regnum*. In the terms in which its law was couched and in its very geographical structure it was reminiscent of the Roman empire. Thus the rules of Roman law could be easily borrowed by the canonists for organization and interpretation of the law of the church, and, inevitably, the characteristics of the Roman *imperium* were applied to the papacy.

The work of the canonists was contemporaneous with a deliberate and remarkably successful policy of actual centralization proceeding from papal initiative—a policy the less to be resisted because in its early stages it was bound up with a revival of spiritual fervour and a programme of reform which aimed to emancipate the clergy from secular

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influence and to curb the laxity too often associated with local autonomy. The organization of monastic and mendicant orders exempt from diocesan control and subject directly to the pope was part of a general movement toward the purification and reinvigoration of religious life. The centralization of ecclesiastical courts was a counter-attack against monarchic inroads on their jurisdiction. Papal interference in the appointment of prelates might appear to be the only possible weapon against secular intimidation of ecclesiastical electors. Papal deposition of bishops or their transfer to other sees, the sending out of papal legates armed with plenipotentiary power to correct the faults of local administration, the development of centralized revenue devices which swelled the papal treasury—all might be justified in terms of the strengthening of the church even while they contributed to the strengthening of the papacy within the church.

The drive toward centralized control did not proceed without the opposition of local churchmen, but so long as the main battle lines were drawn on the issues of reform versus corruption, priesthood versus king, the moral advantage lay with the pope, and clergy jealous of their local rights had no effective strategy save to support the kingship. Thus much of the best thought of the twelfth and thirteenth centuries was devoted to the rationalization of papal dominance in the church, while, on the other hand, those churchmen who resented papal encroachment devoted their main efforts to the defence of the independence of secular government.

The conscious drive toward centralization began with Gregory VII, whose claims to unique and irresponsible authority were set forth crudely in the *Dictatus Papae*. Unsystematized as they were, they nevertheless included most of the essential elements later woven into the doctrine of the *plenitudo potestatis* of the pope. Pamphlets of the period of the investiture struggle attempted to rationalize some of these claims; the study of the canon law, begun in the twelfth century, organized the precedents for papal intervention in local affairs and, with the help of borrowings from the civil law, presented a steadily growing doctrine of papal absolutism in legal terms. Innocent III was the first to claim explicitly for the papacy a plenary power within the church<sup>2</sup>; the canonists of the thirteenth century, especially Innocent IV and Hostiensis, developed the implications of this thought and extended it to a direct supremacy over secular affairs. Aquinas argued for a

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plenitude of power in spiritual affairs, though not in temporals.<sup>3</sup> At the beginning of the fourteenth century, Aegidius Romanus formulated in systematic theory the idea of the plénitude of power over both temporals and spirituals, using neo-platonist conceptions of hierarchy and order, and James of Viterbo interpreted the church as a *regnum*, the pope as its king. More popular, and more specific in their claims for the papacy, were the *Summa de Potestate Ecclesiastica* of Augustinus Triumphus, cast in the cogent scholastic form which marshalled and disposed of all objections, and the *De Planctu Ecclesiae* of Alvarus Pelagius, strangely combining an impassioned denunciation of abuses in the church with a thorough-going exposition of papal absolutism. When the case for papal absolutism in the church was restated in the fifteenth century by the anti-conciliarist John of Turrecremata, his positive theory contained virtually no assertions that had not already appeared in these earlier works.

Four main elements entered into the mature theory of the plenitude of papal power. First, there was the concept, already familiar to us in Aquinas's and Aegidius's theory of regal monarchy, of the wide range of discretion necessarily permitted to the ruler entrusted with the care of the community. It was the right of the pope, and his grave responsibility, to command whatever was necessary for the welfare of the church entrusted to him. His was the '*potestas perfecta*' which could lack nothing essential to the government of the church. He was uniquely charged with the interpretation of the faith and of the divine law, although he could and should be assisted in major questions by the advice of a general council. He could make and unmake positive law or dispense from it at his pleasure; all positive law rested upon his authority, and no pronouncements of previous popes or councils could bind his discretion. He carried the law 'in the shrine of his bosom.' What pleased him had the force of law. His will 'stood in the place of reason.'<sup>4</sup>

There were indeed some theoretical limits to papal discretion. Aquinas laid down the general principle that, whereas the pope could freely dispense from all canons resting on positive law, he could not dispense from 'canons which are instituted by divine law as pertaining to the articles of the faith or the substance of the sacraments or which have manifest connection with divine or natural law pertaining to good morals.' The canonist Hostiensis recognized an absolute right of



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dispensation from the provisions of positive law and also a qualified right of dispensation from the precepts of divine law, where dispensation did not tend to the subversion of the faith, inducement of mortal sin, or the peril of souls. As these general principles were developed in detail by later writers, specific limitations on the papal power were largely whittled away. The presumption of divine revelation was generally limited to the Decalogue, the New Testament, and the decisions of the first four general councils on matters of faith; and even here certain possibilities of specific dispensation *ex justa causa*, though not of abrogation, were sometimes defended. Where the fundamentals of revelation and of natural law were involved, the pope as interpreter and executor enjoyed broad powers of supplementary definition: thus he could alter the ritual of the sacraments, specify the application of the Decalogue, add to the articles of the faith or remove 'errors' from them. Outside the area of matters presumed to be determined by divine or natural law, there were no limits to his authority to dispense, suspend, modify, or abrogate. The mere will of the pope, Alvarus Pelagius said, was sufficient grounds for dispensation from positive law, even without just cause. The pope should be the imitator of divine law and the observer of natural law, said Augustinus Triumphus; but of positive law he should be 'both maker and destroyer, in accordance with the needs of the times.'<sup>5</sup>

A second element in the theory of the *plenitudo potestatis* was the doctrine that all governing power within the church flowed from the original authority of the pope. In the power of administering the sacraments—the *potestas ordinis*—conveyed through ordination and consecration, all bishops were equal; all priests were equal in regard to the sacraments within their competence; in this purely spiritual power the pope had no superiority. But the *potestas jurisdictionis* was conveyed to the church through the papacy; subordinate officers held it only through delegation from the supreme and ultimate right of the pope. This conception was particularly developed by Aegidius, though it was not original with him. The idea of a single fountainhead of dominion was, in Aegidius's thought, the basis of all social order, and he marshalled quotations from the Bible and the Fathers, logical arguments from Aristotle, analogies from feudalism, to develop this idea. The power of the keys was granted to Peter and to Peter alone; he was the rock on which the church was built. 'The powers that be are *ordained*

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by God,' and ordination implied not merely a hierarchy of dignity and function but also the transmission of all authority from the apex to the base. The hierarchy was necessary; division of function was divinely planned for the welfare of the church; but the details of the structure and the right of each member to his office were derived from the authority of the pope. Other writers explicitly added that the cardinals and the general council had no authority except that derived from the papacy and argued that without the ultimate concentration of all authority in a single head the church must lack the unity essential to a perfect organization.<sup>6</sup>

The implications of this concept were of great importance. In the first place, it provided a basis for the papal assertion of the most complete right to judge, discipline, depose any member of the hierarchy, to transfer bishops from one see to another, to reapportion areas of jurisdiction—in brief, to exercise all the rights of a supreme administrator over his agents. In the second place, the doctrine secured the immunity of the pope from the judgment of other officers of the church, unless—an unlikely case—he should voluntarily submit to judgment. And, in the third place, if all the power of the church was originally embodied in the pope, it could be argued that he retained a right of direct intervention at any point in the affairs of the church where it seemed desirable.

The doctrine of the papal right of intervention did not necessarily follow from the concept of delegation, though the idea that the papacy originally embodied all the power of the church was a logical basis for it. Aegidius and others argued that the power of the pope was a power 'without weight, number, or measure'<sup>7</sup>; like the power of God, it was not exhausted or reduced through transmission to subordinates. The power of jurisdiction was distributed through all the offices of the church, but at the same time it remained complete and immediately present in the head. Plenitude of power meant the ability to do directly through one's self whatever one could do by agents, said Aegidius; and he added that only God and the pope possessed this type of power. Normally the pope should respect and foster the division of functions prescribed by the constitution of the church; but, at his discretion, when he judged that the welfare of the church demanded it, he could intervene at any point and transfer to himself the jurisdiction normally exercised by subordinates. This argument in particular justified the

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removal of legal business from lower courts to the papal *curia* and the virtual substitution of papal appointment for the canonical election of prelates, both of which practices were becoming increasingly frequent—and increasingly lucrative. The papal appointment of bishops in disregard of the canon law was, as Aegidius explained, an ecclesiastical equivalent of the miracle through which God sometimes acted outside the law of nature.<sup>8</sup>

Finally, the concept of the *plenitudo potestatis* involved an almost complete doctrine of submission to the decrees of the papacy. No earthly power—not even the general council—could judge the pope, since all earthly powers—including the general council—were derived from him. But more than that, even the right of private nullification or resistance was denied or narrowly restricted by the extreme proponents of this theory. For the pope was the vicar of God; his decision must be presumed to be God's decision; therefore there was no appeal from one to the other. God's will was known only through his interpretation; as a man he might be mistaken, but 'his error creates right.' Though the whole world contradicted his interpretation of law, nevertheless it must be obeyed, unless it was manifestly contrary to the faith itself.<sup>9</sup>

The doctrine of the *plenitudo potestatis* of the pope strikingly illustrates the extreme conclusions that could be drawn from the premises of the medieval idea of monarchy. To some kind of monarchy the church was committed by revelation; given that commitment, no further revelation was needed to make that monarchy absolute. For although it was specifically applied to the head of the religious community and although it was coloured and reenforced by the portentous words of the Bible, the doctrine of the *plenitudo potestatis* was a rational structure worked out with all the rigour of logic, and its details owed little or nothing to the data of faith. It has been said that the most perfect specimens of Gothic building could still continue to stand even without the leaping buttresses which seem essential to their design; so the doctrine of the *plenitudo potestatis* might safely though less impressively have been constructed from the elements available to the defenders of any type of pure monarchy. That the power of any prince comes from God; that unity needs the concentration of supreme governmental authority in the hands of a single man; that all other offices are delegations of his power; that to him who has the care of the community must be

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entrusted the sole authority to interpret fundamental law and to make and unmake the positive law adapted to the needs of changing times; that he must be free from all coercion; that no human law can set impermeable boundaries to his discretion; that the power to dispense from law is a necessary conclusion from the power to enforce the law—all these principles were applied to the secular monarchy on purely rational grounds by Aquinas, by Aegidius, or by Occam. With their firm faith in the unity of human reason and their indifference to legalistic ways of thinking, they refused to take the last step—to argue that the decision of the prince must be assumed to correspond with fundamental right; yet this was asserted by some of the civilists and by Aeneas Sylvius as a necessary deduction from the concentration of authority.<sup>10</sup> When this step is taken, the authority of any monarch, whether pope or emperor, may remain theoretically limited but is actually illimitable: within the frame of fundamental law the ruler becomes a dictator. One does not need a theory of absolute legislative sovereignty to release a virtually arbitrary power: the concentration of executive and judicial sovereignty in a single man is enough.

That these dangers were not immediately apparent in Aquinas's theory of pure monarchy—or even in Occam's theory of limited monarchy plus an emergency power—was partly because of their insistence on the right of private judgment, and partly also because their approach was ethical rather than legalistic. Their emphasis was not on what the prince could legally do, but on what he ought to do. He ought to act in accordance with reason, and this must mean that in the vast majority of cases he would act in accordance with law. They admitted the exceptional cases, but did not stress them. The canonists and philosophers who developed the extreme theory of papal power reversed the emphasis: while still asserting that the pope should normally follow the law, they contemplated with enthusiasm his right to disregard it. The tapestry with which they decked the papal *curia* was woven of exceptional cases; but, frail as were its separate strands, the final fabric could keep the wind from any tyrant. However broad the normal powers of other officers might be, their boundaries were known; but the inscrutable Vicar of God, bearing the laws in the shrine of his breast, presided in lonely majesty over the infinite realm of the abnormal.

The doctrine of the *plenitudo potestatis* of the papacy did not, of course, develop unassailed, especially since the papacy itself was by no



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means hesitant in exploiting the rights granted it by theory, and, in fact, found opportunities of casual intervention so frequently that the abnormal rapidly became the commonplace. The glow of spiritual purpose which once had haloed the centralizing policies of the papacy slowly faded; by the fourteenth century it was conspicuously noticeable that the papal authority was often used to no end but the aggrandizement and enrichment of the popes, and the opponents of papal policy were able to assert with some plausibility that the papal power was being gravely misused. Thus the later stages of the development of the theory of the plenitude of papal power were coincident with the beginnings of a reactionary movement that aimed to limit papal power.

Materials for the theorists of this reaction were not lacking. Quotations from the Bible and the Fathers, the experience of centuries, practical common sense—all agreed in testifying to a principle which even the most extreme advocates of the papal right of intervention did not deny: that a division of function within the hierarchy was necessary to the fulfilment of the church's mission; and it was characteristic of medieval thought to pass easily from political necessity to political right. Moreover, even the sacred tradition which supported the papal claims to a unique position could be criticized. While in one version of the gospel story the keys had been entrusted by Christ to Peter alone, in another version they were granted to all the apostles.<sup>11</sup> Those who could read the New Testament record with eyes not clouded by the usual interpretation—there were few in the Middle Ages, but Marsiglio was one—could gather better evidence there for an original equality of the apostles than for the original primacy of Peter. It was possible, therefore, for opponents of papal centralization to argue that not the papacy alone, but the entire hierarchic structure of the church owed its being to divine institution, and that the bishops—who certainly derived the *potestas ordinis* from apostolic succession without the mediation of the pope—were similarly independent in jurisdictional authority. If there were precedents for papal intervention in the offices of subordinate clergy, still the normal scope of those offices was clearly enough defined by usage and the canon law to provide a standard for criticism of papal action.<sup>12</sup> And the fact that the canon law prescribed election, not papal appointment, as the normal means of choosing bishops and abbots was a useful ground for attack



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on the concept of delegated power, even though, by increasingly frequent papal miracles, that prescription was currently disregarded.

Another gap in the papal fortifications was the traditional position of the general council, which was conceived to represent the entire church. The great councils of the patristic period had laid down the fundamentals of Christian dogma. Councils had deposed popes for heresy, and even the most extreme defenders of papal irresponsibility did not question these precedents or the right which they implied, though some saved the consistency of their theory by asserting that the pope who became a heretic ceased *ipso facto* to be pope, being spiritually dead, and that the council did not depose him but merely discovered and proclaimed a fact that had already occurred.<sup>13</sup> Through the centuries, councils had been called to the aid of popes to settle vexed questions of faith and discipline; even the most ambitious popes of recent times had not ignored the council, but used it, as medieval kings used the estates, as a means of mobilizing support for their policies. The council was summoned and dismissed by the pope, and he presided over its sessions. Thus it was not impossible for the defenders of papal sovereignty to argue that it had no authority to meet and decide save that imparted to it by the pope, and that accordingly its right was inferior to his and he was not bound by its decisions.<sup>14</sup> But its traditions of dignity and its representative composition suggested another interpretation of its right and made it the most important claimant to power valid against the pope.

Finally, there were sensitive areas in the theory of the papacy itself. It was difficult to argue that the single control of the pope was absolutely necessary to the unity of the church so long as the institution of election meant that there was a regular measurable interval between the death of one pope and the consecration of another—and when, on a few exceptional occasions, that interval had actually lasted for several years. If the headship of Christ was a sufficient unifying force for such periods, might it not be depended upon to unify a church in which the authority of the pope was regularly balanced by the independent authorities of other offices? Moreover, the elective power of the cardinalate could be construed as itself a right independent of papal grant. Even though the defenders of the *plenitudo potestatis* maintained that the authority of the cardinals was delegated to them by the papacy and did not involve a transfer of monarchic power, but simply the

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designation of the person on whom the suspended mantle of Peter might fall,<sup>15</sup> still the cardinals appeared as representatives of the entire church, and it was relatively easy to suggest that the papal power was transmitted to the pope through the mediation of man and might if necessary be removed in the same way. Again, the canonist tradition on the deposition of the papacy was ambiguous. Not only heresy, but schism, idolatry, and 'any notorious crime' had been mentioned by early commentators on the *Decretum* as grounds for deposition; and though some of the thirteenth-century decretalists had tried to restrict the area to the case of manifest heresy, the earlier texts continued to exist and other decretalists continued to expand the list.<sup>16</sup> Finally, the resignation of Celestine V in 1294 had given a startling recent example of a guiltless pope removed from office by human agency; and though Aegidius reconciled this event with his general theory by making a distinction between the indestructible office and the man who filled it,<sup>17</sup> this argument evidently cut two ways.

All these materials could not be woven into coherent theories until after the development of a corporative approach to general problems of authority and organization. The advocates of the theory of the *plenitudo potestatis* themselves pointed out the similarities between the church and the secular state and, as we have seen, borrowed from secular analysis many of its concepts of the intrinsic characteristics of a *regnum*. In the same way, as secular theory in the fourteenth and fifteenth centuries was reinterpreted in corporative terms, it offered to the opponents of centralized power in the church the ideas that authority could be latent in an entire community, that the community might institute and set legal limitations upon its ruler, and that representative institutions might retain rights valid against him. If the church could be conceived as a corporation, the Aristotelian principles that means to an end belonged to those to whom the end belonged and that a *perfecta communitas* had within itself all the power necessary for securing its proper objects could be applied to it with revolutionary effect. Here, however, there were two major difficulties, though neither appeared insuperable to the advocates of this interpretation. The direct institution of the papacy by Christ must be either explained away or somehow harmonized with the notion of an original delegation of power by the community. The problem of the rights of the laity in a church conceived as a self-governing corporation was even more

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difficult, in view of the sharp distinction between clergy and laity which had always been maintained in ecclesiastical theory and practice.

In the development of theories opposing the doctrine of the papal plenitude of power, several distinct stages can be distinguished. Before the Great Schism, the question of the internal organization of the church was overshadowed by other issues. But Boniface VIII's apparent assertion of direct suzerainty over secular powers, the bitter controversies between John XXII and Lewis of Bavaria over the basis of the imperial authority and between John XXII and the Spiritual Franciscans over apostolic poverty, the scandalous worldliness of the popes of the Babylonian Captivity, and the obvious corruption throughout the church all combined to arouse a general movement of opposition to papal policy. The intellectual leaders of that movement, however various their specific concerns, often concurred in basing their hopes of reform on a meeting of the general council to restrain and discipline the papacy, determine vexed questions of doctrine, and reform the church. They were thus forced to begin to re-examine the theory of the structure of authority within the church.

The most important theorists of this period were John of Paris, Marsiglio, and Occam. John of Paris was primarily interested in the defence of secular rights from ecclesiastical control, but incidentally opposed the arguments for unlimited papal power within the church, describing the church as a mixed monarchy, declaring that the power of prelates was derived 'from God and from the electing people,' and asserting that the council alone could establish a matter of faith and that the council—or, in another passage, the cardinals—could depose the pope.<sup>18</sup> His treatise, although it did not present a fully-developed conciliar theory, was to influence later conciliarists, especially those of the moderate Parisian school. A far more radical and systematic position was taken by Marsiglio of Padua, who not only denied that the clergy as such had any coercive jurisdiction but also denied the divine institution of the primacy and drastically applied to the government of the church his conception of the entire *universitas* as the original locus of authority. In many ways, Occam was more conservative than Marsiglio and less willing to construct the constitution of the church entirely on naturalistic bases, but at some points his sardonic imagination went even further, and he was scarcely less hostile than Marsiglio to the notion of an irresponsible despotism within the church.<sup>19</sup> In his

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voluminous works he analysed innumerable alternative theses and organized arguments from every field of thought—doctrinal, historical, legal, political. His own conclusions were not always clearly stated, but his treatises were storehouses of ammunition for use against papal absolutism. Thinkers of less scope and originality than these added their voices to the growing chorus.

Yet papal dictatorship, armed with practical as well as theoretical weapons, might soon have silenced this opposition had it not been for the open scandal of the Great Schism, which suddenly reduced to absurdity the thesis that papal absolutism was the sure means to preserving the unity of the church. It initiated a second period, in which the question of authority within the church became paramount. Men of more sober temperament than Marsiglio and Occam searched their writings for solutions to the problem that confronted them. The University of Paris, under the leadership of Pierre d'Ailly and Jean Gerson, became one focus of conciliar sentiment. Conciliar projects developed among the cardinals; important treatises were written by Cardinal Zabarella, Dietrich of Niem, and others.<sup>20</sup> Discarding the most radical opinions of their predecessors, the intellectual leaders of this period wove their safer thought into systematic theories to justify the conciliar action that they wished. Finally, after the Council of Constance had healed the Schism but failed to meet the problem of reform, the leadership in conciliar thought passed to men of more daring minds, of whom Nicholas of Cusa was the most important for systematic theory.

The history of the development of conciliar thought helps to explain the variety of theories offered to meet the practical situation. It is therefore impossible to present conciliar thought as a single coherent system, like the doctrine of the papal plenitude of power. It is, however, possible to find a general pattern in the argument, while noticing the specific points on which conciliarists disagreed.

One thread in that pattern was a re-examination of the origin of papal authority. The most extreme stand was that taken by Marsiglio, who, following his conception of the popular and natural origin of all power and brilliantly criticizing the scriptural and historical evidence adduced for the divine origin of the primacy, insisted that it was an institution of human construction, created by the *universitas fidelium* for administrative convenience, and enjoying only the very narrow and mechanical power which was conceded to it by the corporate church.<sup>21</sup>



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Occam canvassed the arguments for both sides of the question with his usual acuteness, but forbore to make a decision.<sup>22</sup> In the conciliar period, few thinkers were willing to follow Marsiglio's radical doctrine.<sup>23</sup> Some, including Gerson, maintained the immediate divine institution of the papacy as of all ecclesiastical offices, but pointed out that while the authority of the office was directly from Christ, human mediation controlled the choice of the office-holder and regulated the exercise and use of power. Many powers exercised by the pope, Gerson added, were not inherent in the office but were assigned to it by the church for greater convenience.<sup>24</sup> Others insisted on the divine origin of the papal authority but asserted that it was mediated by human consent. Pierre d'Ailly, for instance, stated that 'the Roman church has its authority from God, but secondarily from the council.'<sup>25</sup> And Cusa gave the papal power a broader theoretical base through applying to it his doctrine that all coercive jurisdiction over free men was mediated through the consent of those who were to be ruled.<sup>26</sup> His theory of the necessity of consent to coercive authority led him also to the assertion that the laws of the church were valid only when they were ratified by acceptance in custom or by the explicit approval of a representative council, and that they then became binding on the pope.<sup>27</sup> But even those who accepted the mediate origin of the papacy were generally agreed on the necessity of monarchic control in the church, both as a matter of expediency and as divinely prescribed. Occam, indeed, questioned whether the church might not, with changing conditions, have the right to change its form of government.<sup>28</sup> If—and the answer is uncertain—he believed that it had, his opinion remained exceptional.

But to insist upon the necessity of monarchic government for the church and to assert the divine institution of the papacy was not the same thing as asserting that the papacy enjoyed by divine right an original monopoly of all the power granted by Christ to the church and that all other offices exercised a derived power. The conciliarists generally agreed that the authority of the whole hierarchy rested ultimately on divine institution which gave each office its own sphere of independent right,<sup>29</sup> though they again differed as to the role played by corporate consent in transmitting that authority. Cusa emphasized the necessary consent of each diocese to its ruler and found that consent expressed through the act of canonical election.<sup>30</sup> Gerson suggested



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that the areas within which authority might be exercised rested on the determination of a general council.<sup>31</sup> At all events, delegation from the papacy was excluded; other offices were construed as coordinate in origin with the papal power. It followed that the normal authority of the pope was necessarily limited by the rights of other offices; that it was essentially an authority to protect rather than to disturb the cooperative functioning of the hierarchy; that intervention in the spheres assigned to other offices could be justified, if at all, only on the plea of manifest emergency. Writers of the conciliar period constantly compared the church to the human body, and traced its present woeful condition to the unwarranted interference of the head in functions that properly belonged to other organs.<sup>32</sup>

As the pope was normally limited by the independent right of other offices of the church, so also he was normally limited, the conciliarists maintained, by the body of law which had been laid down by general councils. Since that law did not rest simply on the authority of the papacy but on the authority of the entire church represented in the councils, the pope had no right to alter, suspend, or abrogate it, and his own ordinances and judgments must coincide with its provisions.<sup>33</sup>

As we have seen, even the advocates of the theory of the *plenitudo potestatis* had asserted an ideal of harmony and legality and had expected the illimitable discretion of the pope to be used only in exceptional cases. But the difference between papalists and conciliarists was much more than a difference of emphasis. In asserting a theoretical basis for the autonomy of each office in its sphere and for the supremacy of conciliar law, the conciliarists clarified the distinction between the normally limited powers of the pope and his exceptional plenary power and erected a standard by which the pope could be judged.

The principle which most sharply separated conciliarists from papalists and which gave force to all the other differences was their insistence that the decisions of the pope need not be presumed to be correct, that his interpretation need not be accepted as final, that there existed in the church an authority which was in certain respects superior to his, by which he could be judged. Occam had asserted a private right of disobedience to papal decrees which were contrary to divine and natural law, contained an intolerable error, or concerned a matter outside the sphere of papal jurisdiction.<sup>34</sup> The right of private resistance to the pope did not entirely disappear from the thought of later conciliarists.<sup>35</sup>

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But their greatest attention was, like Occam's,<sup>36</sup> directed to the defence of the council as a regular institution of the church which could hold the pope responsible for the proper fulfilment of his office, could judge him, and, if need be, depose him.

A minor problem in conciliarist theory, but one of major practical importance for the theorists associated with the Council of Pisa was the application of their general principles of conciliar authority to a council which must meet without the summons of the pope and take action without his participation. For they agreed that normally the council must represent the entire church, and that normally it assembled by papal summons and took action under his presidency. For the abnormal situation, a variety of arguments were developed. Occam had pointed out that when the church was small it could certainly have assembled spontaneously—surely it could not have less power now that it had grown so large.<sup>37</sup> The right of any corporation to assemble itself spontaneously was pointed out. The special role of the emperor as the protector of Christendom, together with historical precedent, suggested that when the pope failed to call a council he might properly do so in case of manifest need. It was argued that the council could not really be headless, for in default of the pope it acted under the direct headship of Christ; that the council, perfectly representing the church, necessarily included the authority of the papal office even if it did not include the pope; that, if a living pope refused to summon a council when a council was obviously needed, it was possible to proceed as if he were dead. Underlying all these arguments and sometimes rising clearly to the surface was the principle which was a recurrent motif of the whole conciliar movement: there must be in the church the power to do what had to be done for the safeguarding of its unity and its imperative purposes. If the necessary power was not to be found in the constitution of the church, then it must be directly deduced from the purposes for which that constitution existed.<sup>38</sup>

The right of the council to judge and discipline the pope was proved by a variety of arguments. It was possible to expand the universally admitted rule that the pope could be deposed for heresy, arguing that a schismatic pope, or one guilty of notorious crimes, was as dangerous to the church as any heretic. The papalist argument that a heretical pope was deposed *ipso facto* rather than by conciliar authority could be met by the argument that the holding of an ecclesiastical office was

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not simply a result of personal qualities: as formal action was necessary to institute a pope, so formal action was necessary to depose him.<sup>39</sup> Behind these theses there necessarily lay the general principle that the representative council was in some sense superior to the pope—that it also was charged with a final authority for the welfare of the church; and the necessity of this principle was particularly conspicuous in the circumstances of the schism, which seemed to demand the recognition that the council could depose a pope regardless of his own guilt when the welfare of the church was at stake. Specific arguments and appeals to precedent were not enough; full analyses of conciliar authority and its relations to papal authority had to be elaborated.

Here there was naturally a divergence among conciliarist theorists. The more radical, who traced the authority of the pope to the consent of the ecclesiastical community, could argue that the council which completely represented that community was always superior to the pope and could withdraw the authority which it had originally granted.<sup>40</sup> The more moderate, clinging to the tradition of the independent and divinely-instituted authority of the pope, could not follow that path. But they could argue that the pope, for all his plenitude of power, was still a member of a whole which must be greater than its part<sup>41</sup>; that though the pope was normally superior to the council, that relationship might be reversed when the faith or the welfare of the church was threatened<sup>42</sup>; that the council, like the papacy, had its authority immediately from Christ; that, unlike the papacy, it had received a divine promise of indeviability; that ecclesiastical power existed 'for the edification, not the destruction, of the church'; that the church, divinely instituted as a perfect community, must include whatever authority was necessary to insure its own ends; that, although the substance of papal authority, like that of every office, was indestructibly derived from God, its application to particular persons and the terms of its use were mediated through the determinations of the church represented in its general council.<sup>43</sup> In short, though in certain ways and for certain purposes the plenitude of ecclesiastical power belonged to the pope, in other ways and for other purposes it belonged to the council.

This notion of the authority of the council was for many of the conciliarists in some ways parallel to the secular idea of an original constituent and legislative authority in the community, on which was

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founded a right to participate in the formulation of basic law and to depose the ruler when his abuse of authority showed him unworthy to continue in office. But it was more than that. Even moderate conciliarists regarded the council as capable *per se* or *per alios* of all papal functions, though recognizing that only an emergency situation gave the council the right to substitute its own action for that of the pope.<sup>44</sup> They visualized as the ideal of good ecclesiastical government a regular interaction in which the council would both assist and bridle the pope within the areas of policy and jurisdiction. The Council of Constance regarded itself as authorized to make not only basic determinations of faith and morals but also concrete legislative provisions for the reform of the church, which should be binding upon the pope under pain of conciliar discipline.<sup>45</sup> And this intrusion of the council into the sphere of actual government was regarded as an authority not merely produced by the emergency but implicit in the ideal normal constitution of the church. Frequent papal consultation of the council on questions of reform as well as errors was asserted to be not merely desirable but essential to the welfare of the church: in the decree *Frequens* the Council of Constance provided for future meetings of the council at regular intervals, independent of papal discretion.<sup>46</sup> Pierre d'Ailly argued for an interim authority of the cardinals, whose power was also immediately from Christ and indestructible: 'with and under the pope' they were to 'rule the church and temper the use of the plenitude of power.'<sup>47</sup> Gerson defended the conciliar principle that the council enjoyed a permanent right to regulate the papal use of authority.<sup>48</sup> More radical thought visualized a regular process of appeal in specific cases from papal to conciliar decision.<sup>49</sup>

However, even while they stressed the normal limitations on the pope, most of the conciliarists continued to regard him as a monarch whose office must necessarily involve a wide area of discretion. Thus they continued to assert that he had 'the plenitude of ecclesiastical power,' even though the use of that plenitude might be restricted here and there by conciliar action. Gerson explicitly recognized a papal power of dispensation, although less broad than that claimed by the papalists; that dispensation must not be so frequent as to be turned into virtual legislation.<sup>50</sup> Nicholas of Cusa described the papal authority as consisting in 'a free power of administering'<sup>51</sup> the keys of heaven and recognized a papal right to disregard the law in a particular case



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on the grounds of necessity or utility.<sup>52</sup> Antonius Rosellinus denied the right of the council to pass judgment on the acts of the pope if they were not heretical or dangerous to the church; if they were merely unjust, 'he who is commanded ought not to obey, yet the council does not relieve him from the judgment of the pope.'<sup>53</sup>

When the moderate conciliarists tried to find formulae to express the basic relations of papal and conciliar authority, they were obliged to make statements which to modern minds sound almost meaningless, but which, as well as language could, actually expressed their own complex thought. The plenitude of power, Zabarella said, 'is in the corporation itself as in a foundation, but in the pope as the minister by whom it is exercised.'<sup>54</sup> 'It is in the pope,' d'Ailly explained, 'as in the subject who received it and exercises it ministerially; . . . it is in the universal church as in the object which causally and finally contains it; . . . it is in the general council as in the image which represents it and regularly directs it.'<sup>55</sup> 'Considered in its breadth,' said Gerson, the plenitude of ecclesiastical power embraces all the offices of the church, and is not simply in the pope 'unless in a certain way, as in his own way the source and origin of power.' 'Considered in its height,' 'the plenitude of ecclesiastical power is formally and subjectively in the Roman pontiff alone.' But the plenitude of ecclesiastical power is also 'in the church, as in its end, and as in that which rules the application and use of this sort of plenitude of ecclesiastical power through itself or through a general council sufficiently and legitimately representing it.' Thus the general council, though it is not the proper subject of the authority granted by Christ, has the rights which those to whom an end belongs always have over the means to the end: 'the right to control its assignment to this or that person,' 'the right to regulate its use,' and the right to provide, directly or indirectly, for the emergency exercise of the plenitude of power when the death or deposition of the pope has temporarily deprived the church of its proper head.<sup>56</sup> 'The power is in the pope in one way, in the council in another way. . . . Whence the council has, in many things which concern the pope, the authority to advise and recommend, while the pope has the authority to exercise and execute.'<sup>57</sup>

These latter statements may seem to suggest an attempt to formulate a concept of separation of powers—a concept which, to modern minds,



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would seem the easiest solution of the conciliarist dilemma. But neither the tradition of the church nor contemporary theories of authority in the state offered the conciliarists any basis for the clear-cut modern analysis of separate kinds of power. The texts describing the divine grant of authority made no such distinctions; the powers traditionally exercised by the papacy were executive, judicial, and legislative; the council normally included and was headed by the pope. The notion of plenitude of power itself implied the indivisibility of power. Secular theory, as we have seen,<sup>58</sup> had stressed the necessary cohesion of various kinds of power; it had, indeed, come to recognize the location of a fundamental constituent and legislative power in the community but had not dreamed of separating executive from judicial and legislative authority; except for communities essentially 'political' in structure, it had no formulated notion of institutional checks on the ruler within the sphere of his authority. Of constitutional types suggested by traditional theory, the one best meeting the needs of moderate conciliarists was the vague notion of mixed monarchy, a notion which implied a process of cooperation and mutual influence among organs of government not sharply contrasted in function. This concept had been already applied to the church by John of Paris, and Gerson and d'Ailly<sup>59</sup> also used it to express their feeling that no single organ of the church was totally and always supreme over the others, and that the ideal government of the church should be an indivisible process of mutual interaction between pope and council, or pope, council, and cardinalate, a process in which the necessities of the church might at times concentrate an immediate supremacy in one or the other, but a process which should normally be so harmonious as not to raise the question of the relative force of the components or a delimitation of the areas of their authority.

The moderate conciliarists' doctrine of conciliar supremacy was not, of course, in any sense a doctrine of conciliar sovereignty; nor, in fact, were the more radical doctrines theories of sovereignty in the modern sense. Great as were the powers claimed for the council, they finally rested on a divine plan which also defined their limits; the authority of the council, like that of the pope, was essentially an authority to interpret and apply principles which originated on a plane far beyond its competence. It could not alter the divinely-established constitution of the church or abolish offices rooted in that constitution. It could not

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normally carry on the government of the church itself, or fundamentally dictate the way in which that government should be carried on. Its power to make law was controlled by the existing body of divine revelation, and its very power to define the meaning of that revelation was premised on the assumption that in it, through the workings of the Holy Spirit, the process of revelation still continued.<sup>60</sup>

The Council of Constance healed the schism, and in so doing deprived the conciliar movement of the appeal to manifest necessity which was its strongest argument. Neither the Council of Constance nor the Council of Basel made any notable progress in reforming the church or in establishing boundaries to papal power. Factional deadlock in the councils demonstrated to a world soon bored and disillusioned that papal authority (now that there was again only one pope) was more conspicuously useful to the unity of the church than was the authority of the council. Kings who had supported the early conciliarist movement found that they could get what they wanted most expeditiously by dealing directly with the pope as a fellow monarch, and the pope soon found that he could safely ignore the high-sounding claims and querulous protests of the Basileans. The conciliarist party dwindled and dissolved. Nicholas of Cusa, like many others, repented of his earlier doctrines and proclaimed the papal power the source of all the power of the church.

The intellectual reaction against the conciliarist attempt to make the church a mixed monarchy was led by Turrecremata, whose *Summa contra Ecclesie et Primatus Apostoli Petri Adversarios* is a cogent defence of a papal monopoly of power. Though his positive arguments were more systematically presented than those of any previous papalist writer, he added nothing essentially new to their doctrine. But his rebuttal of the conciliarist arguments was a brilliant analysis of the inherent weaknesses of their position.

Underlying the issue between papalists and the more extreme conciliarists were two different conceptions of the church: the Catholic conception of the church as an institution and something resembling the Protestant conception of the church as a fellowship. Without a fully developed Protestant theory, the attempt to trace ecclesiastical authority to the members of the church collectively ran into difficulty. For the authority claimed was essentially supernatural and, moreover, had at its heart powers which could be exercised only by priests. If the

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officers of the church were endowed by Christ with special powers which the laity as such could not have, then the church was something different from a corporation and the principles that governed the structure of a corporation were not applicable to it. The church could not collectively be a subject of powers which the greater part of its members were incapable of holding; collectively, it must remain the passive object of authority granted by God on its behalf.<sup>61</sup>

Marsiglio had partially forestalled this objection by denying the existence of a supernaturally-granted coercive jurisdiction in spirituals: the clergy were simply preachers, teachers, consultant experts, administrators of the sacraments; even the power of excommunication was simply an expert definition of a spiritual disease, which had no coercive effect except as it was implemented by governmental action. This interpretation ran counter to the entire tradition of the church, which insisted on the effective authority implied in the power of the keys; it was obvious heresy. Moreover, Marsiglio's system had the intrinsic weakness of laying no adequate basis for the control of the church membership over the internal organization of the church or for the exercise of that control by its secular representatives. That control could not satisfactorily be based on the purely civic interests of the political community: it required, as Marsiglio partly realized, a state which was also a church. But the state as a church could not derive its constitution from naturalistic Aristotelian principles: it required—as Marsiglio did not realize—some equivalent of the Lutheran doctrine of the priesthood of all believers.

The same flaw appeared in other theories in which the laity appeared as transmitters of and participants in a coercive spiritual authority: for example, the theory of Cusa. By what natural right can mere man assist in setting up the judge who opens and closes the gates of heaven?<sup>62</sup> Once admit that the power of the keys can pass through unconsecrated hands, and there is no stopping this side of Protestantism.

Gerson and d'Ailly had avoided this difficulty by defining the church as the clerical hierarchy. They had not avoided the difficulty that the vast majority of that hierarchy—the simple priests and lower orders—were as incapable as the laity of some powers traditionally existent in the church. And they had sacrificed the consistency of their own position. Using this definition, they had no right to claim that the church was the object of power. For the purpose of ecclesiastical power, as

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Turrecremata pointed out, was not the maintenance and development of the hierarchy: it was the attainment of beatitude for the souls of men—including the souls of laymen.<sup>63</sup> Moreover, with this definition, they had no right to argue from the church as object to the church as subject of power. The power of healing, said Turrecremata in an apt analogy, exists for the sake of the patient. But it is not primarily in the patient; it is in the physician.<sup>64</sup> Recognizing the principle of supernatural power concentrated for the sake of those incapable of holding it, the moderate conciliarists had no final argument against the ultimate concentration, which is autocracy. Their strongest arguments against autocracy necessarily moved on the plane of expediency; and arguments from expediency must always be relative and insecure.

On this plane, the essence of the moderate conciliarist argument was a kind of pluralism, an implicit denial that the good government of the church required that authority must necessarily always come to a head at the same point. Their pluralism was peculiarly precarious because of their inability to formulate it in a clear-cut separation of powers theory. Their conviction that ecclesiastical power was an indivisible whole forced them to assign it *en bloc* to the pope, the hierarchy, and the council 'in different ways'—a conception which a crisp legal mind, like that of Turrecremata, could easily reduce to logical absurdities. The premise of Turrecremata's argument was, of course, the familiar monistic thesis that somewhere in the church, if its unity was to be preserved, there must be an authority whose word was final. Given that premise, there could be no answer to his demonstration that any kind of conciliar control over the papacy would involve an inherent logical contradiction<sup>65</sup>; one could not reasonably quarrel with his assertion that the very nature of the papal authority raised it above the organization that it ruled, so that, from the point of view of jurisdiction, the pope was not a part of the church.<sup>66</sup>

To modern eyes trained in recent scrutiny of the concept of sovereignty the intellectual superiority of Turrecremata's monism over the implicit pluralism of his conciliar opponents may not seem so self-evident as he regarded it. However, the strength of any type of political pluralism must lie in the extent to which it reflects the actual relations of political processes. Secular government in the later Middle Ages had actually developed a kind of pluralism of interacting offices—a 'mixed' government which, as we have noticed, was only vaguely



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reflected in secular theory. In contrast, the long-range tendency of the church had been in the direction of increasing centralization. The healing of the schism reestablished as a going concern an elaborate mechanism geared to a single source of decisive authority; or, rather, in so far as there were competing centres of force, those centres were national or factional, not institutional. The type of pluralism the conciliarists envisaged had no real basis in loyalty or habit. A very abnormal emergency had temporarily substituted conciliar for papal supremacy, but the conciliarist vision of a working *concordantia* among the various organs of the church remained utopian. A monistic construction of authority, whatever its defects in realistic comprehensiveness, always has the strength of its simplicity; and in this instance it also had the strength of more accurately expressing the possibility of its own time. When the delicate adjustments of harmonious consultation and compromise are precluded by circumstance, the logic of expediency supports the intellectual process which proclaims that unity can proceed only from that which is itself one.

### Dictatus Papae Gregorii VII

[The so-called *Dictatus Papae Gregorii VII* was drawn up ca. 1075. Its authenticity has been questioned, but the weight of opinion attributes it to Gregory VII and regards it as probably a private memorandum. At all events, this list of the principal prerogatives claimed by the papacy is, as Voosen says (*Papauté et pouvoir civil à l'époque de Grégoire VII*, p. 71), 'a syllabus of the ideas which thenceforth were to dominate all the history of the pontificate.' I have used the text in Mirbt, *Quellen zur Geschichte des Papsttums und des römischen Katholizismus* (4th ed., Tübingen, 1924), 278, p. 146.]

1. That the Roman church was founded by the Lord alone.
2. That only the Roman pontiff is rightly called universal.
3. That he alone can depose or reestablish bishops.
4. That his legate, even if of inferior rank, is above all bishops in council; and he can give sentence of deposition against them.
5. That the pope can depose the absent.
6. That, among other things, we ought not to remain in the same house with one whom he has excommunicated.



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7. That it is permitted to him alone to establish new laws for the necessity of the time, to make new peoples into congregations, to make an abbacy of a canonic establishment and vice versa, to divide a rich bishopric and combine poor ones.

8. That he alone can use imperial insignia.

9. That all princes kiss the feet of the pope alone.

10. That his name alone is recited in the churches.

11. That his name is unique in the world.

12. That it is permitted to him to depose emperors.

13. That it is permitted to him to transfer bishops, under pressure of necessity, from one see to another.

14. That throughout the church, wherever he wishes, he can ordain a cleric.

15. That one ordained by him can be over the church of another, but not to perform service; and that he ought not to accept a superior rank from any bishop.

16. That no synod not summoned by him ought to be called general.

17. That no chapter and no free canonry exists without his authority.

18. That his decision ought to be reviewed by no one, and that he alone can review the decisions of everyone.

19. That he ought to be judged by no one.

20. That no one may dare to condemn a man who is appealing to the apostolic see.

21. That the greater cases of every church ought to be referred to him.

22. That the Roman church has never erred nor will ever err, as the Scripture bears witness.

23. That the Roman pontiff, if he has been canonically ordained, is indubitably made holy by the merits of the blessed Peter, as St. Ennodius, Bishop of Pavia, bears witness, with the support of many holy fathers, as we find in the decretals of the blessed pope Symmachus.

24. That by his precept and licence subjects are permitted to accuse their lords.

25. That he can depose and reestablish bishops without a meeting of the synod.

26. That he who is not in concord with the Roman church is not held to be a catholic.

27. That he can absolve the subjects of the unjust from their fealty.

## Aegidius Romanus

[The *De Ecclesiastica Potestate* of Aegidius Romanus, written in 1301, was the first systematic statement in theological terms of the doctrine of the papal plenitude of authority. Although Aegidius was mainly concerned to demonstrate the direct and limitless supremacy of the pope in temporals, he also developed the meaning of the plenitude of authority which the pope held within the church. The following passage (bk. 3, ch. 9) presents a fundamental aspect of Aegidius's theory. The text used is that edited by Richard Scholz (Weimar, 1929).]

CHAPTER IX. *What plenitude of power is, and that in the Supreme Pontiff there truly resides a plenitude of power*

Since in many chapters we have spoken of plenitude of power, in this chapter we wish to explain what plenitude of power is. We shall also show that this plenitude of power is in the Supreme Pontiff, so that his power . . . is without number, weight, and measure.

Now, many explanations of plenitude of power can be given, but for the present let it suffice to show only this: that plenitude of power is in some agent when that agent can do without a second cause anything that he can do with a second cause. For if an agent does not have such power, it follows that he does not have full power, since he does not have the power in which all power is contained. Therefore, in so far as the Supreme Pontiff has the power in which all power is contained, we say that he has full power. And, since we can descend to the government of men through analysis of those natural phenomena which we can see in the government of the world, we shall say that in no agent in the sky is there plenitude of power, nor in any second agent, because the sky cannot do without a second cause what it can do with a second cause: for instance, if the sky and a lion cooperate in the generation of a lion, the sky could not, without a lion, produce a lion, nor could the sky without a horse produce a horse. Now in God Himself there is plenitude of power, since He can do without a second cause anything that He can do with a second cause. Therefore the power of all agents is contained in the first agent: namely, in God. For in the production of the world He produced a man without a preceding man and a horse without a preceding horse; now, however, he produces a horse through the mediation of a horse, but if He wished, and when He

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wished, He could do so without semen; and He produces a cow through the mediation of a cow, but He could make a cow without a cow; for He could make a calf from a tree-trunk, or from nothing; and even as He wished, so the thing would happen. And although He can do all things, yet He so administers things that He allows them to follow their own courses. Yet God sometimes performs a miracle, or miracles, acting outside the common course of nature and not according to the common laws of nature which He has imposed on it.

So the Supreme Pontiff also, to the extent of the power which is in the church, has plenitude of power and can without a second cause do anything that he can do with a second cause: for instance, in the case of the election of a bishop, how the election of a bishop ought to be held and how the electors should be weighed in regard to zeal and merit and number—that is, how many and what sort of electors there ought to be so that the candidate may be deemed rightly elected—depends on the institution of the Supreme Pontiff; therefore such an election depends on the Supreme Pontiff's decreeing and ordaining the method of election, even as the production of natural things depends on God as a primary cause, Who lays down His laws for natural things, how they shall act and how they shall produce their effects. The election of a prelate depends also on the agreement of the canons as on a second cause, even as the production of natural things depends on natural things themselves under one first agent: namely, under God. Truly, therefore, to the extent of the power which is in the church, there resides a plenitude of power in the Supreme Pontiff, since he can do without a second cause what he can do with a second cause. For he could provide for any church without election by the chapter; and in so doing he would not act in accordance with the common laws which he has imposed but in accordance with his own plenitude of power. For, as we have said, the election of a prelate is made by a primary cause, the Supreme Pontiff, who decrees how the election shall be made, and by a second cause, namely, by the election carried out by the electors according to the form given them. Yet the Supreme Pontiff could, without a second cause of this sort (that is, without election by the electors) provide any church with a prelate. And what has been said about the election of a prelate holds true for other ecclesiastical matters, because the Supreme Pontiff can act without other agents as the one who has plenitude of power, in whom all the power of the church is recognized to reside.

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Yet the Supreme Pontiff ought to observe that God, Who has all power (not merely conditionally, in respect of this or that, but absolutely), nevertheless, in order that His works of wisdom may not be in vain, nearly always acts according to the laws which He has laid down for things, and nearly always observes the laws, producing the effects of second agents through the mediation of second agents. For He burns through the mediation of fire, as He cools through the mediation of water, because, according to the laws He has laid down for things, it cannot be that what is in the fire shall not be burned and what is in cold water shall not be cooled; and also, according to these laws, it cannot be said that he who walks in water shall not wet his feet. Sometimes, however, though rarely, He brings it about, in disregard of the common laws, that what is in the fire shall not be burned and that someone may walk in water with dry feet.

So, likewise, the Supreme Pontiff, because he has the authority to decree how the church ought to be governed, ought to govern the church in accordance with these laws, and ought to permit chapters to carry out their elections, and prelates to perform their duties, and other officers of the church to do their work in accordance with the form given them. Yet, for a reasonable cause, he can disregard these common laws and act without other agents, because the power of all agents is contained in him, so that in him is all the power of all the agents in the church; and therefore it is said that in him there is a plenitude of power.

### Augustinus Triumphus

[Augustinus Triumphus, one of the most important intellectual defenders of the *plenitudo potestatis papae*, was born in Ancona in 1243, became a member of the Augustinian order, and studied at Paris as a fellow-student of Aegidius Romanus. He later taught at Paris, participated in the Council of Lyons, was court preacher at Padua to Duke Francis of Carrara, and spent the later years of his life in Naples, where he was a political counsellor of Charles II and the tutor of the future king Robert. He died in 1328.

He was the author of many theological works, including commentaries on the *Sentences* of Peter Lombard and the *Metaphysics* of Aristotle, and of a number of publicistic works, of which the most important was his *Summa de Potestate Ecclesiastica*, variously dated 1320 or 1324-28 and dedicated to John XXII. It was a systematic and comprehensive exposition, in rigorous



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scholastic form, of the extreme doctrines already outlined by Aegidius Romanus and James of Viterbo; it was widely read in his own day and printed several times before the sixteenth century. His *Tractatus Brevis de Duplici Potestate Prelatorum et Laicorum* (probably written in 1308, shortly after the death of Boniface VIII) had already set forth some of these principles as they applied to the relation between secular and spiritual authority.

The following selection is taken from the *Tractatus . . . de Duplici Potestate . . .*, ed. R. Scholz, *Die Publizistik zur Zeit Philipps des Schönen und Bonifaz VIII* (Stuttgart, 1903), pp. 486-501, at pp. 489-497. It includes a most precise account of the important difference between the *potestas ordinis* and the *potestas jurisdictionis*, which is basic to the theory that all jurisdictional power within the church is derived from the ultimate authority of the pope.]

. . . . We shall adduce reasons and authorities which prove that spiritual power is not granted to the prelates of the church except through the mediation of the authority of the pope, the successor of Peter. . . .

However, lest we labour under ambiguity, we wish to distinguish between the power of an order and the power of jurisdiction.

And to understand this it should be known that the power of an order is that in which is imprinted the character of the order or the perfection of the character. For, since there are seven orders, a character is imprinted in each order, and this character is nothing other than a certain spiritual power through which those who are ordained in each order can do something which he who is not ordained in that order cannot do.

Whence the Master [Peter Lombard], defining order in terms of the character and power which it imprints on the soul, says in the fourth book of the *Sentences*, [di. 24], that order is a certain symbol by which spiritual power is transmitted to the ordained; yet the power of an order does not mean merely the character which, as was said, is imprinted in any order, for the term *spiritual power* can also be applied to the perfection of a character, which is not imprinted, unless in the episcopal order, which, although it is not an order distinct from the other seven, is yet the perfection of orders, so that the bishop can confer all orders, as a simple priest cannot. For although the power of the order is the same in the priest and in the bishop, yet in the priest this power exists in a small and imperfect way, but in the bishop it exists



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in an excellent and large way, and therefore we say of a bishop, 'Behold the great priest.' Therefore the power of an order is either the impression of a character or the perfection of a character.

But the power of jurisdiction is that through which someone can, in smaller or greater affairs in proportion as his jurisdiction is more or less universal or particular, execute or command the execution of the primary power, which is that of the order. These two powers are distinct and separate in every ecclesiastical prelacy, although the one is ordained to the other, because it is possible to have the power of an order without any power of jurisdiction, and *vice versa*. For a simple priest has every power of the order, yet he is not competent to exercise the power of jurisdiction unless a cure of souls has been entrusted to him. Likewise the power of jurisdiction can belong to someone to whom the power of an order does not belong: for instance, if someone who is a deacon or subdeacon also becomes pope; for when he is made pope every power of jurisdiction belongs to him; . . . yet the power of an order does not belong to him unless he becomes priest and bishop.

In view of this, let us say that in regard to the power of the order we agree with the dictum of those masters who say that this power was immediately granted by Christ to the apostles. . . . Whence it is true that in this power all the apostles were equal to Peter, and consequently that in this power all bishops are equal to the pope; and the pope cannot take away this power from them, nor even from priests, after it has been granted to them; nor can he take away the impression of the character in the priests, and the perfection of the character in the bishops. . . . But if we speak of the power of jurisdiction, we believe that the opinion of the aforesaid masters does not contain the truth, because this power was not granted by Christ to the apostles except through the mediation of Peter, and consequently it is not conferred on the prelates of the church except through the mediation of the pope, who represents the person of Peter. Whence in Matthew 16:[19], when Christ granted the power of jurisdiction, he did not speak in the plural but in the singular, saying to Peter alone, 'I shall give thee the keys of the kingdom of heaven,' as if he would say plainly: although I shall have given the power of the order to all the apostles, I give thus to you alone your power of jurisdiction, to be administered and distributed through you to all the others.

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Therefore it follows that the apostles do not have the power of jurisdiction from Christ, either in regard to receiving it or in regard to executing it, except through the mediation of Peter, and consequently the prelates of the church do not have this power from Christ . . . except through the mediation of the pope. And because he thus confers the power of jurisdiction on the other prelates of the church, he can take it away from them in the same way and can, for cause, deprive them of this power.

Moreover, we wish to adduce reasons which prove that the power of jurisdiction does not belong to prelates except by way of the pope, and that this power was not granted to the apostles except by way of Peter. . . .

The first reason is as follows. We said that the blessed Peter had a certain prerogative over the other apostles, by which he was *Cephas* and their head. And consequently the pope has a prerogative over other prelates, that he is called their *cephas* and head; whence *papa* [pope] sounds like *pater patrum* [father of fathers]. Secondly, he cannot have this prerogative by virtue of the power of an order, because in that power all the apostles were equal to Peter, and all bishops are equal to the pope. If, therefore, Peter was head of the apostles and the pope is head of the prelates, it must be that this prerogative belongs to him by virtue of the power of jurisdiction, which the apostles received from Christ by way of Peter, and the prelates receive from Christ by way of the pope. . . .

The second reason is shown as follows. The church militant is one by the unity of its head, although it is multiple by the multiplicity of its members. Whence in the sixth chapter of the Canticles [Song of Solomon 6:9] it is written, 'One is the dove, the one of its mother' (the church), 'the chosen of her that bore her.' But if all the apostles had received power from Christ, and not by way of Peter, and if the prelates received power from Christ, and not by way of the pope, then each of the apostles would have been head of the church through himself individually, and consequently the church would not be one, which is contrary to the authority just cited. And the gloss on the statement in Matthew 16: [19], 'I will give thee the keys of the kingdom of heaven,' bears on this argument, when it says that Christ spiritually granted the keys and the spiritual power to Peter in order that he might call us to unity, adding, 'For this reason he constituted Peter prince of the

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apostles: that the church should have a principal vicar of Christ, to whom the diverse members of the church might have recourse if perchance they should disagree with one another, because if there were several heads in the church the bond of unity would be broken.' And if they had seen this gloss, many men would not be saying that there are several heads in the church, one in temporals and another in spirituals, or that all prelates have the same spiritual power as the Roman head, which would follow if each prelate received spiritual power from Christ without the mediation of the pope and if a king or emperor received temporal power from Christ without the mediation of the pope.

The third reason is explained as follows. We shall say that the prelates of the church compare with the pope as a boy compares with a mature man. For although there was in the boy the same virtue and the same power as is in him after he becomes a man, yet when he is a grown man he can do something by this power which he could not do when he was a boy, because when he was a boy he could not generate by his generative potency, nor do other things which he can do by this potency when he is a grown man. But, granted that the spiritual power, or power of the order, is the same in the pope, the bishops, and the priests, since the same power of the order is bestowed on them all, yet that power exists in a perfect way in the pope, since he can generate and produce bishops and archbishops, as simple priests or bishops cannot do; and this argument proves not only that the power of jurisdiction is greater in the pope than in other prelates but also that the power of the order exists in the pope with a certain plenitude and perfection which is lacking in other bishops or prelates. For we shall say that the terms *episcopate*, *archiepiscopate*, and *papacy* are names of the power of jurisdiction and of the power of the order; therefore, inasmuch as such terms refer to the power of jurisdiction, all prelates of the church receive this power from Christ by the mediation of the pope, but inasmuch as the aforesaid terms refer to the power of the order, all receive that power immediately from God, because it is granted with the infusion of the Holy Spirit, which the ministers of the church cannot bestow, except ministerially. And hence it is that the prelates of the church cannot be deprived of this power of the order by the pope, because they do not receive it from him except ministerially; nor can the priests be deprived of this power by the bishops,

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because they do not receive it from them except ministerially; yet the bishops can be deprived of the execution of this power by the pope, and the priests by the bishops, and similarly anyone in the whole world can be deprived of the power of jurisdiction and of the administration of temporals and of spirituals by the pope, because everyone receives this power from him; nor is this power given by infusion of the Holy Spirit, since this power of jurisdiction and administration can belong to mere laymen who do not have any power of an order. Whence, even as the pope confers this power on everyone, so he can take it away for cause. . . .

The fourth reason is shown as follows. We say with the apostle, Romans 13:[1], that there is no power but of God. However, we say with the same apostle that the things that are of God are ordained; therefore those who say that the prelates of the church do not receive the power of jurisdiction from Christ by way of the pope resist and contradict the divine ordination, because the divine ordination consists in this: that each creature be related to God by the mediation of another. Whence Augustine says concerning the statement in Genesis 1:[31], 'God saw all that he had made and they were very good,' that indeed all things were good in themselves, but very good on account of the order which they keep to one another, inasmuch as one rational creature is subdued to God through the mediation of another, since He placed all things in number, order, and measure. And if it be said that Christ said to all the apostles in the last chapter of Mark [16:15], 'Go ye into all the world and preach the gospel to every creature,' which seems to refer to the power of jurisdiction, namely, to preach and to administer the sacraments, we shall say that Christ presupposed that this would be done through the intervening authority of Peter. For Christ said many things to all the apostles indiscriminately which, however, He left to be done through the intervening authority of Peter, whom He had instituted as their head.

[The following selections from the *Summa de Potestate Ecclesiastica* (Rome, 1479), qs. 5, 6, illustrate the way in which the doctrine of the immunity of the pope from earthly judgment could be deduced as the logical consequence of his position as head of the church. In the present life, no writ runs against the pope; and even the divine court in which he must ultimately be judged is not within the reach of earthly appellants.]



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### QUESTION V

*Article IV. Whether the pope can be deposed for any notorious crime*

. . . . I answer saying that Huguccio raises this question in regard to [*Decretum*], c. 6, di. 40. He asks whether the pope can be accused of the crime of simony, or adultery, or homicide, and says that he believes that if the crime is notorious and redounds to the scandal of the church, and if the pope, having been admonished, remains incorrigible, he can be accused on the grounds that contumacy is infidelity. . . . But who has cognizance of such contumacy? And before what judge could the pope be denounced or accused? For it is plain that he is under no one but God. Therefore, truly, if he has been negligent in his office and is involved in crimes and brings numerous people to misery by his bad example, he will be duly punished in hell for ever with multiple afflictions; but in this present life no mortal man may presume to denounce his guilt and crime. . . . I think, therefore, that the pope cannot be deposed for notorious crime and contumacy; for any such deposition or action would redound to the evil of the whole church, since, if the pope were indicted, the church would be headless.

### QUESTION VI

*Article VI. Whether it is possible to appeal from the pope to the general council*

. . . . I answer saying that, as the Philosopher says in III *Ethics*, [ch. 3], the function of deliberation is to choose among alternatives. For a council is composed of many persons in order that they may propose a variety of alternatives from which he who presides over the council can choose one in preference to the others. . . . Therefore, without the pope, or without his authority, no choice among proposed alternatives can be made in the council. For this reason it is said in [*Decretum*], c. 5, di. 17, that the authority to assemble universal councils resides in the apostolic see, since without the authority of the Roman pontiff the council has neither effective existence nor authority. Likewise, there is another reason why it is not possible to appeal from the pope to the council: for no one but God can change the order of natural things in the natural realm, and in the realm of morals no one except the pope, who represents God on earth, can change the jurisdictional order. But the jurisdictional order which exists among men presupposes



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the authority of the pope in calling a council and in allotting authority to it and in ordaining the system of appeal from one judge to another; therefore it would be ridiculous to appeal from the pope to the council, since, without the authority of the pope, no one can alter the jurisdictional order established in the government of the church.

*Article VIII. Whether it is an error to say that it is possible to appeal from the pope to God or man*

. . . . I answer saying that it is an article of faith to believe in one holy catholic and apostolic church. Now the unity and constancy of that church are derived from the unity and constancy of its head. Moreover, whoever believes that it is possible to appeal in the present life from the pope to man believes that there is in the church another head besides the pope and thus does not believe in the unity of the church. And whoever believes that it is possible to appeal, in jurisdictional order, from the pope to God believes that a jurisdictional order was not established among men in the present life: thus he sins against the apostolic authority. Therefore I think that it is an error to believe that it is possible to appeal in the present life from the pope to God or man, especially if such a belief is rashly and pertinaciously maintained.

### Marsiglio of Padua

[Marsiglio's plan for the government of the church was an application of two fundamental principles: that the total community of believers was the only holder of authority in the church and that in a Christian state the community of believers was identical with the community of citizens which composed the original *legislator*. Accordingly, a council representing the totality of Christians would be the supreme authority in the definition and prescription of religious matters; and the secular government, acting in the name of the Christian *legislator* and with power derived from its authority, could appropriately convene the council and give coercive force, if any, to its decisions. Within this general framework, the bishop of Rome found a place in Marsiglio's system as the appropriate administrative and judicial head of the religious organization, with the premise that his institution and authority rested entirely upon the ultimate authority of the community of believers.

The selections translated below, from chs. 20–22 of *dictio* 2 of the *Defensor Pacis* (ed. Prévité-Orton), should be read in conjunction particularly with

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ch. 12 of *dictio* 1 (tr. above, pp. 73–78) in which Marsiglio stated his general, very Aristotelian case for reposing legislative power in the community, and chs. 15–17 of *dictio* 2 (tr. below, pp. 598–606), in which he argued that specific ecclesiastical authority originally rested in the community of believers rather than in the hierarchy. The role of the council was intrinsically limited, and the secular government, which also represented the community of Christians, shared in the government of the church as the appropriate mechanism for implementing conciliar decisions. The possibility of disagreement between the two sets of agencies through which the Christian community acted was one that Marsiglio did not take into account.

The reader may also notice, in ch. 20, that in spite of Marsiglio's explicit reference to his general argument for reposing legislative authority in the many, he took it for granted that the composition of the council ought particularly to reflect, not 'the inexpert multitude,' but the specialized knowledge of priests, theologians, and canonists. The community of believers in general was expected to contribute its authority, not its opinions.]

### CHAPTER XX. *Whose is or was the authority to define or determine ambiguous statements of the Holy Scripture*

2. . . . I show that the principal authority, mediate or immediate, to determine [the meaning of ambiguous statements in the Holy Scripture] belongs only to a general council of Christians or its more weighty part, or to those to whom this authority may have been granted by the corporation of faithful Christians, as follows. All provinces or notable communities of the world should choose, in accordance with the determination of their human legislator or legislators and with regard to a due proportion, in quantity and quality, of the persons so chosen, faithful men, first priests and then laymen, qualified by the superior uprightness of their lives and their knowledge of divine law. These men, acting as judges in the first sense of the term [i.e., as experts; cf. *dictio* 2, ch. 2, sec. 8] and representing the whole corporation of faithful people by the authority granted to them by the corporations, should come to a certain place which the majority of them choose as most appropriate. In this place they should, together, define those matters of divine law which have appeared doubtful and which it is useful, expedient, and necessary to determine, and also ordain other things, pertaining to the ritual of the church, or divine worship, which may add to the peace and tranquillity of the faithful. For it would be idle and disadvantageous to convene an inexpert multitude of the

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faithful to this assembly; disadvantageous, also, since they would be distracted from their necessary tasks for the sustenance of corporal life—a situation which would be burdensome and, perhaps, unbearable.

3. All the faithful are by divine law liable to this assembly, because of its purpose, but in different ways: for the priests are liable because it is their office to teach the law according to its true meaning and to further those things that contribute to its purity and truth, to condemn contrary errors, and to recall men from error by their exhortations, arguments, and reproofs. . . . However, after the priests and beyond the rest of the people, those who are learned in divine law are liable, for they ought to guide others and to meet with the priests, especially if they have been sufficiently required and commanded to do so, because 'to know the good and not to do it is a sin,' as it is written in James 4: [17]. Also, for the defining of other things, aside from divine law, for the common utility and peace of the faithful, those who have been appointed to this duty by the human legislator can and ought to participate in the council. Legislators have an obligation also: to choose suitable persons to compose the council, to provide them with temporal necessities, and, if need be, for the sake of the public utility, to compel the attendance of those suitable and chosen persons who may refuse to attend.

4. Moreover, that the said authority of defining and ordaining in the way we have described belongs only to the general council, and to no other individual or particular college, can be shown by the same reasoning and authoritative passages of Holy Scripture as we showed, in the twelfth chapter of *dictio* 1 and the seventeenth chapter of this *dictio*, to apply to legislation and to the secondary institution of ecclesiastical officers, changing only the minor premise of the argument: that is, substituting for the determining of law or the secondary institution of ecclesiastical officers the determining or defining of ambiguities in the Divine Law, together with the rest of the things to be ordained in regard to the ritual of the church, or divine worship. For it is particularly necessary that discretion and care be diligently maintained in these decisions, inasmuch as they are to be held by law and faith; and also in decisions which can profit or harm all the faithful.

CHAPTER XXI. *Whose is or has heretofore been the coercive authority to assemble a general council of priests and bishops and other believers; and whose*

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*is the authority to decree anything therein which may bind the faithful by any penalty or guilt in this present life or in that which is to come; and also whose it is, in this life, to prohibit any transgression of the things established and defined in the general council. Further, that no bishop or priest can excommunicate a prince nor lay an interdict upon any people, nor confer the temporal benefices of the church or the tithes or the licences of the learned professions, unless in accordance with the determination and concession of the general council or of the human legislator*

1. Now, moreover, I wish to show that the authority to call a general council, to appoint suitable persons to it, to cause it to be assembled, held, and carried through in accordance with due form, and to check by its coercive power, legally, in accordance with divine and human law, those who refuse to meet and to perform the said necessary and useful tasks and those who transgress the decisions and ordinances of the said council, whether they be priests or not, clerics or not, belongs only to the faithful legislator without a superior, or to the person or persons to whom this power has been entrusted by the aforesaid legislator. And although this was proved in the fifteenth chapter of *dictio* 1, and in the fourth, ninth, and seventeenth chapters of this *dictio*, in which it was shown by logical argument and more fully certified by the authority of Scripture that coercive jurisdiction over all men alike, whether priests or not, and the appointment and approval of persons, and the institution of all offices belong only to the authority of the faithful human legislator, and certainly not to any one priest or college of priests as such, yet we now wish to support our argument by several citations from the *Codex* of Isidore, especially those which tell of things done in harmony with divine law and right reason. . . .

[There follow various precedents, taken from Pseudo-Isidore, for the summoning of councils by emperors, and the incidental argument that the power of calling and presiding over a council could not belong to the pope, or the pope plus the cardinalate, since it might be that it was their own delinquency that made the council necessary.]

8. Next it is fitting to show that in regard to the ritual of the church nothing which binds men to obedience under any penalty in the present life or the life to come can be established by any individual man, of whatever dignity or rank he may be, except through the immediate or



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delegated authority of the general council and with the intervention of a decree of the primary faithful human legislator or of the prince who rules by its authority; likewise in regard to other human actions, such as fasting, fasting from meat, abstinences, canonizations and venerations of saints, prohibitions or holidays from work for artisans or anyone else, the bonds of matrimony within certain degrees of kinship, the approval or non-approval of religious orders or colleges, and the like, which are licit or permitted under divine law; nor can anyone establish anything involving any ecclesiastical punishment, such as interdict or excommunication or any similar penalty, great or small, and still less bind anyone to obedience under a real or personal penalty to be exacted in this present life, except by the authority of the aforesaid legislator, since it only has the legal power to inflict and exact such penalties, as sufficiently appears in the fifteenth chapter of *dictio* 1 and the tenth chapter of this *dictio*.

9. And this proposition can be proved by the same logical arguments and authorities, with a change only in the minor premise of the syllogisms, by which we showed above that the determination of ambiguous meanings in the divine law belongs to the aforesaid council and that the ordaining through coercive decrees of other actions belongs to the faithful human legislator. And also because things permitted by divine law are not prohibited or made illicit except through the human legislator. And, further, because no bishop has, immediately from Christ, any authority over another bishop, as was shown in the fifteenth and sixteenth chapters of this *dictio*, nor do they have any coercive jurisdiction over each other, or over anyone else, as was shown in the fourth, fifth, and ninth chapters of this *dictio*.

And from these considerations it can also be deduced that it belongs to the authority of the said council only, and not to that of any single bishop or priest or any particular college of priests, to excommunicate any prince, province, or other civil community or to interdict the use of the divine offices. For if a priest or bishop or any particular college of priests ignorantly or unjustly wishes to excommunicate or interdict a prince or province, the result is a great scandal to the peace and quiet of all the faithful. . . . And this, indeed, experience, the best teacher, has recently shown us, when Boniface VIII, Pope of Rome of famous memory, tried to excommunicate Philip the Fair, catholic King of France, and to place his kingdom and those who supported him under

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interdict of ecclesiastical offices. . . . Now this or a similar act of someone else—a tempest of evil passion rather than a power—ought to be utterly prevented; and excommunications and interdicts of this sort, to be applied temperately, ought to be left solely to the general council of Christians, whose judgment, directed by the Holy Spirit, cannot be perverted by ignorance or ill will.

CHAPTER XXII. *In what way the Roman bishop and his church may be head and principal over the others; and by virtue of what authority this may belong to them*

1. . . . We wish to show that it would be expedient and very useful to appoint one bishop and one church or college of priests as the more principal head of the others. But first it is necessary to distinguish the various senses and meanings in which one church or bishop can be regarded as head of all the others, so that we may separate the proper meaning from those that are inappropriate and inexpedient. (1) Moreover, that one bishop or church is head of all the others can be understood in one way: namely, that all churches and individuals in the world are bound to believe his or its definition and determination of ambiguous statements in the Holy Scripture (especially in regard to matters whose belief and observance is necessary to salvation), and to observe the ecclesiastical ritual or divine worship according to his or its ordination. According to this sense or meaning, no bishop or single church of any province, as such, or any college of priests, is head of the others by the appointment of divine law, nor is it expedient, according to the example of the primitive church, that there be any such head; likewise not by any ordinance or decree of the faithful human legislator. For if this were so—together with other improper consequences—all princes, communities, and peoples would be bound by necessity of salvation to believe that they were subject to the jurisdiction of Boniface VIII, and also, according to the decrees of a certain Roman pope, that Christ did not counsel that the common and private possession of temporals, and the power to defend temporal claims at law before a coercive judge, should be despised and renounced. Of these papal declarations, the former is most horribly false and the latter should be shunned as heretical. . . .

2. (2) Again, another meaning of the statement that one bishop and church or college is head of, or more principal than, all the others

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is as follows: that all the clergy of the world, or colleges of clergy, are subject to his or its coercive jurisdiction. But this belongs to no bishop or church by divine law, but rather is forbidden by its counsels and precepts, as has been sufficiently proved in [earlier] chapters of this *dictio*.

3. (3) This priority can also be understood in another way, as follows: that to one bishop or church or college belongs the institution of all ecclesiastical officers, and the distribution of temporals or benefices, and the deposition and removal of all ecclesiastical officers. And in this sense also it cannot be proved by divine law that any bishop or any church is prior to the others; but rather the opposite. And, in short, it cannot be proved by virtue of the words of Scripture that any bishop or church is head or principal of the others with respect to any authority or power, as has been shown. . . .

5. Therefore no bishop or church, as such, is head or principal of the others by virtue of the words of Scripture. For, in the absolute sense, the head of the church and the foundation of the faith is, by the immediate ordinance of God, according to Scripture or truth, only Christ Himself, not any apostle, bishop, or priest. . . .

6. (4) But that some bishop or church is or may be appointed by the authority of the general council—that is, of the faithful human legislator—head and more principal over the others can be properly understood as follows: namely, that it is his function, after deliberation with the college of priests whom the faithful human legislator or general council has associated with him for this purpose, if he has been informed that a question of the faith has arisen (or an evident necessity of the faithful) on account of which it may seem altogether necessary to convoke a general council, to notify and inform the faithful legislator which has no superior, according to which legislator's coercive command the council ought, as we have said above, to be assembled. Also it is his function, among all bishops and clergy, to preside in the said council, to propose topics for discussion, to sum up, in the presence of the whole council, the things that have been decided, to commit them formally to writing under authentic seals, to communicate and convey them to all churches so requesting, and also to know them, to teach them, and to answer questions concerning them; it is also his function to prohibit the violation of these decisions by some ecclesiastical censure (this applies to matters of faith as well as to the ritual of the church, or

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divine worship, and the other things that may have been ordained for the peace and unity of the faithful): for instance, by excommunication or interdict or another similar penalty, in accordance, however, with the determination of the council and by its authority, and certainly not by any coercive power of real or personal punishment applying in and to this present life. It is also his function, together with the weightier or greater part of the college given and instituted for him by the legislator, to judge over mutually independent bishops and churches in regard to disputes which are, in the proper sense, spiritual. . . , including those things which the general council has ordained in regard to the ecclesiastical ritual. However, if such a bishop, church, or college is too perverse or negligent in this function, according to the manifest, probable, and, as it were, common opinion of the other churches, the other churches can appeal to the faithful human legislator, if he can properly be corrected by the legislator or by him who rules by its authority, or ask for a general council, if, in the opinion of the greater part of the churches and the judgment of the legislator, the case seems to require the assembling of such a council.

Therefore, in this last sense only, I say that to appoint a bishop, or some one church, head or more principal over the others in pastoral care without coercive jurisdiction is expedient for the easier and more decorous preservation of the unity of the faith, although it is not prescribed by divine law because the unity of the faith could be preserved, though not so easily, without it.

[The concluding sections of this chapter argue that this presiding bishop ought to be the bishop of Rome.]

## William of Occam

[Occam's proof that a general council could in emergency meet without being summoned by the pope offered an approach more useful to moderate thinkers than Marsiglio's radical principles. It assumed a definition of the church as the community of all believers, but it involved no attack on its normal monarchic constitution. The selection is taken from the *Dialogus* (ed. Goldast), pt. 1, bk. 6, ch. 84.]



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PUPIL: . . . Tell me first, in regard to the council: if the pope is a notorious heretic, and if the electors of the supreme pontiff share or unduly countenance his heretical depravity, and if there appears to be no other way to coerce the heretical pope, how or by whom ought a general council to be assembled?

TEACHER: They say that in this case any catholic who knows that the pope is a notorious heretic, or hears it publicly discussed that the pope is a notorious heretic, ought to be ready to assemble for a general council if it is expedient, and anyone, in so far as befits his rank, ought to exhort other catholics to assemble for a general council. However, this primarily concerns prelates and those learned in divine law. Secondly, it concerns kings and princes and other public powers. In the third place, however, it concerns all catholics, men and women. Thus even catholic women, if they know the pope to be a heretic and the electors negligent in regard to the election of a supreme pontiff, ought, if it is expedient, to urge catholics to convene in a general council for the ordaining of the church; nay, more, even the women themselves ought to attend, if they can further the common good thereby.

PUPIL: This assertion amazes me. For it seems to contain three absurdities: first, that a general council ought to be called without the authorization of the pope; second, that kings and princes and other laymen ought to assemble for a general council; third, that women can and should take part in a general council. For it is clearly proved by the sacred canons that the first is absurd. For, as is maintained throughout di. 17 [of the *Decretum*], a general council cannot be convened without the authority of the supreme pontiff. For Pope Pelagius says [c. 5]: 'We are instructed again and again, by many papal and canonic and ecclesiastical rules, that councils may not be held without the licence of the Roman pontiff. . . .'

TEACHER: That a general council can be convened without the authority of the pope seems to be proved by several arguments. The first is as follows: a particular council can lawfully be convened without the authority of the pope to judge concerning the same true pope. Therefore, all the more, a general council can be convened to judge concerning a heretical pseudo-pope without his authority. The premise of this argument seems to be proved by two manifest examples. The first is that of the bishops who convened to inquire about the deed and idolatry of the blessed Marcellinus; their assembly was a particular

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council, convened without the authority of this same Pope Marcellinus. The second is that of the assembly which convened to judge and depose Pope John XXII; this assembly was only a particular and not a general council. All the more, therefore, a general council could be formed to judge concerning a heretical pope detected in notorious heresy.

PUPIL: This argument seems clearly to prove that a general council could be assembled without the authority of a false, heretical pope; but it does not prove that one could be convened without the authority of a true pope. Whence it also seems that if the pope is a heretic, a catholic pope ought to be elected before the general council is summoned.

TEACHER: It appears to some thinkers that the argument just given patently shows that a general council can be convoked without the authority of any pope whatever, true or false. For if it is lawful to hold a particular council without the authority of the pope for the purpose of inquiring or judging about a true pope, it is much more lawful to hold a general council during the vacancy of the apostolic see, without the authority of a pope, for the due coercion of a pseudo-pope, especially if the pseudo-pope cannot otherwise be coerced. The former is lawful, as is proved by the two examples; therefore the latter ought also to be considered lawful.

The second argument is as follows: every people and every community and every body which can make law for itself without the consent or authority of anyone else can without the authority of anyone else elect certain persons to represent the whole community or body. But all the faithful are one body, as Paul says in Romans 12: [5], 'We, being many, are one body in Christ'; and they are one people and one community. Therefore they can elect certain persons to represent the whole body. Moreover, if men so elected come together at one time, they constitute a general council, since a general council seems to be nothing else than an assembly of certain men who represent the whole of Christendom. Therefore, a general council can be convened without the authority of anyone whatever who is not a catholic and a believer, and, consequently, without the authority of a heretical pope.

The third argument is as follows: the universal church, meeting together to ordain something, can be described as a general council. But the universal church might be reduced to a number so small that

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it could all assemble at the same time; for once, after the ascension of Christ, it was so small in number, and therefore it is not impossible that it might become so small again. Consequently, it is not impossible that the universal church might convene as a universal council even if there were no true pope. Thus it is not impossible that in the vacancy of the apostolic see the universal church might convene all at once. But the universal church does not have less power and authority when it is too numerous to convene all at once than when it can convene all at once. Therefore, whatever the universal church could do through itself . . . it can do through certain men elected from diverse parts of the church. Therefore, if we suppose that diverse parts of the universal church should elect men to convene to ordain something concerning the church of God, the men thus elected, meeting together, could be called a general council, regardless of the fact that there was no true pope. And thus when there is no true pope a general council can be assembled without the authority of the pope.

PUPIL: I somewhat understand this way of putting it, yet, that I may understand it better and thus more clearly arrive at the truth, tell me by what method, according to the opinion we have been discussing, a general council ought to be convened.

TEACHER: It is said that it would be reasonable to send, from each parish or community which could easily convene in one assembly, some person or persons to an episcopal council or to the parliament of the king or prince or of some other public power, and that this in turn should elect some persons to be sent to the general council; and the persons thus elected by episcopal councils or by the parliaments of secular powers can, when they convene in one place, be called a general council.

PUPIL: . . . Explain how those who hold this opinion answer the authorities in which it is manifestly asserted that a general council ought not to be assembled without the authority of the supreme pontiff.

TEACHER: They answer that as a rule a general council ought by no means to be assembled without the authority of the supreme pontiff. Yet this rule fails in a specific case: namely, when the pope has become a heretic and the electors of the supreme pontiff fail to elect a pope and provision for this situation cannot be made otherwise than through a general council of the church. Therefore they say that the authoritative statements of those supreme pontiffs who assert that a general council

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ought not to be assembled without the authority of the pope are by no means to be denied; but they are to be understood sensibly, that they may not be interpreted in any way that prejudices the Christian faith, which ought by all means to take precedence over even a catholic pope.

### Jean Gerson

· [Jean Charlier de Gerson (1363–1429) was one of the most important figures in the intellectual and religious life of the later Middle Ages. Born in the French village of Gerson of a peasant family, he was educated at the College of Navarre in the University of Paris, where he studied theology under Pierre d'Ailly, with whom he was later associated in the conciliar movement. He was elected procurator of the French nation in the university in 1383; in 1395, he succeeded d'Ailly as chancellor of the university, and was also made a canon of Notre Dame. In the university, he had worked toward the reform of the traditional curriculum. Himself a philosophical nominalist and a mystic in the Victorine tradition, he sought particularly to weed out barren subtleties from the study of theology and to focus it on the central questions of the faith.

His leadership in the University of Paris led him into the wider arena of ecclesiastical politics when the university became the spearhead of a movement to heal the Great Schism through the calling of a general council. His pamphlets were among the influences that led to the winning of general European support for the university's conciliar programme and to the ultimate meeting of the Council of Pisa and the election of Alexander V. But when the new pope adopted a policy which subordinated the parish clergy and the universities to the special privileges of the mendicants, Gerson, with the University of Paris, led a new revolt against him and against his successor. The Council of Pisa had not secured the abdication of the other two popes. Thus, in a new series of tracts, Gerson urged the calling of a new council to depose all three; and in the Council of Constance (1415) he held a position of recognized leadership up to the election which finally healed the Schism. His influence, however, grew less as factional disputes overcame the original zeal of the Council; and his sponsorship of the process against Jean Petit, who had defended the Burgundian assassination of the Duke of Orleans, came to grief against the active opposition of the Burgundians now dominant in the French delegation. The supremacy of the Duke of Burgundy in France put an end to Gerson's influence there. First in exile, later in retirement in France, he spent his remaining years chiefly in the writing of books of mystical devotion.



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The following selections from Gerson's conciliarist writings have been translated from the collection of his works made by Ellies du Pin (Antwerp, 1706), and compared with the texts in Goldast, *Monarchia*. . . . The first is from the *Tractatus de Unitate Ecclesiastica* (*Opera*, vol. II, pp. 113-118; Goldast, vol. II, pp. 1426-1431), written in January 1408 (1409), just before the meeting of the Council of Pisa, in opposition to the thesis that no council could meet save by the authority of the pope.]

### CONSIDERATION II

The essential unity of the church continues always in her relation to Christ her Bridegroom. For 'Christ is the Head of the church' [Ephesians 5:23], in Whom we are all one, according to the apostle, even if He has no vicar: that is, when His vicar is bodily or civilly dead or when there is no probability that Christians will ever show obedience to him or to his successors. Then the church, by divine and natural law, to which no positive law rightly understood offers any obstacle, can assemble herself in order to procure for herself, at a general council representing her, one certain vicar; and she can do this not only by the authority of the lord cardinals, but also by the assistance and aid of any prince or other Christian. For the mystical body of the church, most perfectly established by Christ, does not have less right and strength for the procuring of her own union than has any civil, mystical, or true natural body; for there is no provision in immediate and immutable divine or natural law that the church cannot congregate herself and unite herself without a pope or without any particular rank or college, in which death or error can, in a particular instance, occur.

[Three other selections, from statements written ca. 1415, illustrate the theory with which Gerson defended the programme of the Council of Constance. The first is from the *Libellus de Auferibilitate Papae ab Ecclesia* (*Opera*, vol. II, pp. 209-223; Goldast, vol. II, pp. 1411-1421). In this treatise Gerson maintained that a pope could be deposed on the basis of any of six kinds of guilt and that there were also six cases in which he could be deposed *sine culpa* but not *sine causa*. The section translated below, considerations 10-12, helps to build up a general theory for a conciliar right of deposition.]

### CONSIDERATION X

The vicarious spouse of the church is, in particular cases, removable from the church, either by her direct action or through the general

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council which represents her or by persons appointed by her for this purpose, regardless of whether or not the vicar himself consents to his abdication.

. . . . Surely God gave the church no rank, no degree of dignity, no kind of ministry except for her edification and common utility. This appears in Ephesians 4: [11-12] and Corinthians 6 [I Corinthians 12: 4-30]. Surely He gave these things for the peace of her 'in whose borders he made peace,' as the Psalmist says [Psalms 147: 14]. And love brings this about; wherefore love is described by the apostle as 'the end of law' [I Timothy 1: 5]. And on love Christ based the pastoral office: 'If thou lovest Me,' said Christ to Peter, 'feed My sheep' [John 21: 17]. And who does not see that there could be many cases, some of which are involved in the present situation, in which the church would be not edified but destroyed, not united but scattered, not fed but devoured, if he who had been duly and canonically ordained the vicarious spouse of the church would not yield voluntarily, or would not be ejected against his will? And let no one wonder at what we say, as if it contradicted the commandment, 'Touch not My anointed' [Psalms 105: 15]. In the same way it would be right for any individual, in case of violence attempted by a true pope against his chastity or life, to repel force with force, instigated by blameless self-defence, and thus he would have a lawful right to lay violent hands upon the pope or throw him into the sea. Why should it not likewise be lawful on occasion for the whole church to do the same, in her own defence and in the cautious repression of attempted violence?

### CONSIDERATION XI

The vicarious spouse of the church is in particular cases removable by a general council held without his consent or against his will.

Let us say first that regularly by divine law a general council ought not to be held if the pope does not call or approve it, if there is one and if there is no legitimate allegation against him. But general rules often undergo exceptions, even as in grammar, so also in morals, in which, especially, particular cases occur in infinitely variable ways: to which exceptions is ordained the higher law, the interpreter of the others, which Aristotle calls *epieikeia* in V *Ethics*, [ch. 10], and another, more divine, which he calls *gnome* in VI *Ethics*, [ch. 1]. Now this law always has place in the interpretation of other particular laws, where the reason

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and end of their institution is seen to fail. Now the end of all laws, not only human but also divine, is love, which works unity. If there is a case, therefore, in which the observation of any law would dissipate unity and be an obstacle to the public welfare, who, using reason, would say that it ought to hold? Doubtless no one would wish this to be done in his own case; how much more would all the community reasonably shun it!

But if anyone should ask by what authority a council of this sort is supported, or what authority it uses, seeing that it is, as it seems, headless without the pope, it should be answered that it uses the authority of Christ its Head and indefeasible Spouse; besides this, the authority of His laws both divine and natural, which grant this licence either to necessity or to manifest charity or to religious piety. For this we have a text, Mark 2:23, concerning the excuse of the disciples who wished to pluck grain on the sabbath and who were excused by the law of necessity, confirmed by the example of David, who ate consecrated bread.

### CONSIDERATION XII

The vicarious spouse of the church is in particular cases removable by the church or the general council, not by advice or recommendation or pronouncement but authoritatively, judicially, and juridically.

Let us presuppose that jurisdiction is the same as the declaration of the law or the authority to declare the law: or, jurisdiction is the immediate faculty of declaring the law. Customarily the term jurisdiction is limited to coercive jurisdiction, which is laid upon or declared upon another even against his will. From this definition first follows the truth of this consideration, how the church or council has on occasion the immediate faculty or authority or power to declare the law even against one who was rightly raised and chosen to be pope. Yet we do not wish to deny that the supreme pontiff has the regitive and authoritative power in respect of all men, as much as Christ wished and thought fit to give him for its exercise: not for his own sake, but rather for the utility of the church. Such authority the rest of the church does not have, unless in a certain unitive and elective way. In terms of this analysis, it is true that the keys were not given to one, but to a unity. It does not, however, follow from this analysis that the whole church or council, in the absence of the pope, especially if he is

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unworthy, cannot exercise authoritative jurisdiction, as a certain divine and indeviabie right to subdue or correct or restrain him, lest he harm not only the church, but himself, like a madman or like a man led astray by drunkenness, the worst of evil passions. For, as Aristotle teaches in *V Politics*, to the whole community belongs the correction or the total disestablishment of the prince, if he persists without amending his ways. And this power cannot be removed or alienated from the free community which can do as it wills about its own affairs, nor can it be suspended through appropriation or by any law. How much the more does the church have this power!

[The next selection is from the *Sermo Habitus XXI die Julii, 1415, super processionibus faciendis pro viagio Regis Romanorum* (*Opera*, vol. II, pp. 274 ff.; Goldast, vol. II, pp. 1406-1411).]

### PART III, SECOND DIRECTION

A general council, although it cannot nor ought to withdraw or diminish the plenitude of papal power entrusted by Christ to Peter and to his successors, but to thank God for this, Who granted it, and to revere and esteem it, can nevertheless limit the use of that power by definite laws and statutes for the edification of the church. This the present council has done in many respects, but especially in this, that it has established a law in regard to the election of a future pope and in regard to his electors: that no pope to come can depose the most reverend father Lord Angelo Corario, on account of the praiseworthiness of his spontaneous yielding, from the cardinalate and the power of a legate granted to him by this council, nor attack nor punish him in any way for any past deeds whatever; this was done rightly and by indulgent condescension, that an example for posterity should be given to one voluntarily yielding when either a pious utility or urgent necessity of the church demands this.

It is expedient, moreover, now, before the election of the supreme pontiff, that many things be thus done concerning the general state of the church, in which supreme pontiffs have turned the use of their plenitude of power too often to abuse, as because they did not wish to hold a general council, nor to relinquish the ordaining rights to lesser prelates, and because they deviated from the statutes of the general councils, now by breaking them, now by changing them, now by



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interpreting them at their pleasure, now by granting privileges and exceptions, openly and without manifest reason or utility.

Whence, in the use of dispensations, the granting of privileges, the innovation of decretals, it is not fitting that the use of the papal power be so restrained that in every such case recourse would be made to the general council, on account of the difficulty and infrequency of convoking it—such as did not exist in the case of the primitive church, when, as Jerome says, all things were done by common consensus. So also it is not expedient that such relaxation be made as would take away and weaken at random the strength and vigour of general councils in their decrees.

Here we may consider Aristotle's teaching about the three kinds of polity: namely, the regal and monarchical, in which one man rules well, of which tyranny is the opposite; another, aristocracy, where the few and good dominate, of which oligarchy is the opposite; and third, timocracy, in which the people rules well, which has democracy as its opposite.

Now, better than any one of these polities would be a polity composed from the regal and the aristocratic, as in the kingdom of France, where the king has instituted a parlement, by which he does not refuse to be judged. But the best and most healthy polity of all would be that which would include this threefold good: the monarchy, the aristocracy, and the timocracy.

Now the general council is a polity so composed, having its direction more from the special assistance of the Holy Spirit and the promise of Jesus Christ than from nature or from human skill alone. . . .

Now what is a general council? It has been described elsewhere, and I repeat: 'The general council is an assemblage, made by a lawful authority, to some place, from every hierarchic degree of the whole catholic church, at which no faithful person who demands to hear is excluded, for healthfully discussing and ordaining those things which concern the due regimen of the same church in faith and morals.' It could be deduced from this definition, together with the preceding statements, in what way the plenitude of papal power was granted by Christ in those things which are supernatural. In others also, which natural, canonical, and civil laws assign to it, as to a monarch, the papal power stands supreme and is concorded with the power of the council, which has been spoken of: because the papal power is included in the council,

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although this power is in the pope in one way, in the council in another way. Even as the keys were given to Peter in one way, and in another way to the church. Whence the council has, in many things which concern the pope, the authority to advise and recommend; the pope, the authority to exercise and execute. For the council could not of itself either absolve in the court of conscience, or ordain priests, or make the Body of Christ, or conquer the infidels with an armed hand; and so of many things; but it pertains to it to advise or recommend about things of this sort; and he who denies its dictate contumaciously denies the Holy Spirit, whose it is to direct the council itself in advising and recommending. Example in man, where the reason has the power to advise and recommend; the will, the exercise and execution.

[Gerson's most comprehensive discussion of the relations of conciliar and papal authority is found in his *De Potestate Ecclesiastica et de Origine Juris et Legum* (*Opera*, vol. II, pp. 226ff.; Goldast, vol. II, pp. 1384ff.), from which the following passages, from consids. I, 6–II, are translated. This treatise was written before 1417 and after the passage of the important decree of April 6, 1415, in which the Council of Constance claimed that its authority was derived immediately from Christ and included the right to make statutes binding even the pope and to punish him for their infraction; this decree is specifically defended in consid. 4.]

### CONSIDERATION I

Ecclesiastical power is the power which was supernaturally and specially granted by Christ to his apostles and disciples and to their legitimate successors, to the end of time, for the building of the church militant, according to the evangelic laws, for the sake of securing eternal felicity. . . .

'Church' is used as an abbreviation, when we speak here of the power of the church: namely, for those who by a kind of special sign are dedicated to the divine service, from the lowest rank . . . up to the highest, with which the pope is adorned.

### CONSIDERATION VI

Ecclesiastical power can and ought to be considered in three ways. In one way, formally and abstractly and irrespectively in itself. In another way, materially or respectively, as it is assigned to particular persons by legitimate right, which is commonly done by consecration

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and election. . . . In the third way, it is considered in respect of exercise or execution. . . . This consideration is useful in distinguishing and resolving the various ways in which theologians and canonists speak of ecclesiastical power, since ignorance or inadvertence about this distinction is a frequent cause of error. . . .

### CONSIDERATION VII

Ecclesiastical power, considered in itself formally and abstractly, is itself invariable and remains the same from the beginning of the nascent church up to the end. The church, indeed, when it is considered in its essential and permanent parts, which are the papacy, the cardinalate, the patriarchate, the archiepiscopate, the episcopate, and the priesthood, has the quality of being integrated from all these, so that, if one of these powers were utterly removed, the church would no longer remain as it was perfectly instituted by Christ seminally and as in a certain germ of itself: for instance, if one imagines the papacy cut off from the remaining inferior powers, that which remains will not be called a church. For this reason, to ask whether the papal authority is greater than the church, or *vice versa*, is the same as asking: is not the whole greater than the part, or is the part less than the whole? Thence it follows that if a general council represents the universal church sufficiently and completely, it is necessary that it include the papal authority, whether there be a pope, or whether he has ceased to be, through natural or civil death. So we may say of the power of the Roman church, or the sacred college, so of the episcopal power, so of the priesthood, which is the power of the pastors, who in the church are lesser prelates. But if anyone wished curiously to inquire how such an abstraction of the ecclesiastical power can be made, and whether it is something real, universal, specific, and quidditative, beyond all operation of the intellect—as one inquires concerning animality and humanity—we send them to the *Metaphysics*. Therefore we grant that, as Aristotle says, ‘Abstraction is not lying,’ although we shall have denied that these universals are real—even as mathematicians do not lie, whether points really exist or not. Whence we say, as is sufficient for us, that universality is in the operation and abstraction which the intellect makes from the exterior cognition of individual things by seeing how those things agree with one another or differ, essentially or accidentally; for instance, that any man agrees in essence with

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another in that he is a rational animal; because the attendant intellect, by a virtue innate in itself, abstracts this likeness, which is not outside of, nor singularly in, single men, and denudes it from place, from time, and from all the confusion of general accidents, and this remains the universal and absolute concept of man in the mind, which, however, originates from singular things outside. So we can think in regard to the ecclesiastical power, when it is considered in itself formally and absolutely. For all priests agree in priesthood, and bishops in episcopacy, and so on for the rest of the powers. . . .

### CONSIDERATION VII

Ecclesiastical power, considered respectively and, in a sense, materially, as assigned to particular subjects, can be called variable and removable in many instances. This is demonstrated daily, when changes are made through a new consecration or a new election or institution of ministers. Consequently, we can say the same thing in regard to the papal power, which is mutable and removable by natural death, as is obvious, or by civil death, namely, by deposition, at least in regard to his plenitude of jurisdiction. . . . Whence, as the pope can renounce the papacy and give a bill of divorcement to his bride, the church, even without guilt on her part, though he should not do this without cause, so the church can dismiss her vicarious spouse and give him a bill of divorcement, without guilt on his part but not without cause. . . .

### CONSIDERATION IX

If ecclesiastical power is considered in respect of its use or execution, it is mutable and variable in many ways. This consideration, together with the two preceding, at once solves the question whether ecclesiastical power is immediately from God or mediately from men. If we consider ecclesiastical power in the first way, it should be conceded without a doubt that it was and is immediately from God, from Christ as Man, so that it was instituted by no other. Nor could an assembly of all mankind, excluding Christ, have instituted a power of this sort, though it could institute for itself an imperial power over all regal power, the power of dukes, counts, and barons, and any other purely secular power. Moreover, it could not institute for itself a



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priesthood nor a papacy, such as the church has; and in the same way it could not abolish them, since it could not change the law of Christ. . . . If, however, ecclesiastical power is considered in the second way, then in the beginning of the nascent church it was granted immediately by God both to Peter and to the apostles and disciples, on whom Christ immediately conferred the priesthood over His true and His mystic body. . . . And thus, consequently, it is probable that, even as Christ immediately conferred this power originally on his apostles and disciples, assigning it to them and not to others, so also He immediately granted its use, act, or exercise, since he who gives the form gives also the consequence of the form. Let us say, finally, regardless of these facts, that the successors of Peter and of the other apostles by canon law, were and are (short of a miracle or new revelation) instituted mediately by men, by consecration, election, or some other kind of institution. Likewise they received and receive the use and exercise of power mediately through human ministry or grant. And, perhaps, in regard to the use and exercise of ecclesiastical power, after the immediate grant of both the power and its use made by Christ to the apostles and disciples themselves, it so happened that because of the increasing number of believers they defined and restricted the use of power in order to avoid schism and to establish an example for the future; and this was done through Peter, the supreme pontiff, by the consent of the whole primitive church or general council; so that everyone could no longer exercise this power upon whomever he wished; but this restriction of the use of power was made with due consideration for the primary ordination of Christ, whereby He wished His church to be ruled principally under and by one monarch, as there is one faith, one baptism, and one church by the unity of both its primary and its vicarious head; for this is the best kind of rule, particularly in spirituals, to conserve the unity of the faith, to which all men are bound. . . .

### CONSIDERATION X

Ecclesiastical power in its plenitude is formally and subjectively in the Roman pontiff alone. . . . In defining this we can say that the plenitude of ecclesiastical power is the power of order and of jurisdiction which was supernaturally given by Christ to Peter, as His direct and first king, for himself and for his successors to the end of time, for the

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sake of the edification of the church militant to the achievement of eternal felicity.

In this definition the term 'supernaturally' is used to distinguish it from the powers or jurisdictions which might belong to the successors of Peter as a result of human civil and political laws, or as a result of that dictate of natural law that gives to him who is supreme in any polity the enjoyment, above other men, of many honours and privileges, or from the special grant or concession of princes and other secular rulers, or, finally, from the favourable concession of the church itself or the general council, such as a perfect community may naturally give its head. There is good reason for such concessions . . . since it is easier to have recourse to the pope and his court than to the general council itself. This is the cause that originally brings about the institution of kings and the assignment to them of the power of making and interpreting laws. Now, some men, not noticing this distinction, have thought that all things that now belong to the supreme pontiffs belong to them as a result of Christ's primary institution and immutable divine law; but this is false. . . .

### CONSIDERATION XI

Ecclesiastical power in its fulness is in the church as in its end, and as in that which regulates the application and use of this sort of plenitude of ecclesiastical power, either directly or through a general council sufficiently representing it. It is clear, at any rate, that the plenitude of ecclesiastical power was given to Peter by Christ for the building of His church, as our definition sets forth, in conformity with the statement of the apostle. For this reason Augustine says, with certain others, that 'the keys of the church were given not to one, but to a unity, and that they were given to the church.' And this can fittingly be understood in the way which the consideration sets forth, because 'the keys of the church were given for the sake of the church and its unity as for the sake of an end.' Also this plenitude of ecclesiastical power can be said to be in the church or the council not only formally as in its end but also in two other ways: in respect of its assignment to particular persons, and in respect of the regulation of its use, if perchance it should be liable to be turned into abuse.

It is certain that the plenitude of ecclesiastical power is in the church

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in these three ways, and in the general council as its representative. And indeed, concerning the first and second ways, there is no difficulty. Likewise not concerning the third, if we consider the definition of the plenitude of ecclesiastical power, where it was set forth that it was given for the building of the church. Since, therefore, the supreme pontiff, who has it subjectively, is open to sin and may wish to turn this power into destruction of the church, and likewise the sacred college, which is given to him and which co-assists him as a sort of aristocratic community, is not confirmed in grace or faith: there remains one inobliquable and indeviable rule from the best legislator, Christ, according to which abuse of this sort of power can be repressed, limited, and moderated. Now this rule is either the church or a general council. Whence, since the middle course of virtue may not otherwise be had than as a wise man shall judge, the final recourse for this wisdom is made to the church, where there is indeviable wisdom, or to a general council. On this are founded those many things which have been decreed and done through this sacred council: for instance, that the pope can be judged and deposed by the council. For he is subjected to it in the regulation of his power in regard to its use; and it can say to him, 'Why do you do so?'. . . .

We can add to this consideration that the plenitude of ecclesiastical power, if it be considered in its breadth, is itself not in the pope alone, unless in a certain way, as being in his own way the source and origin of power. For this breadth of power embraces in itself other ecclesiastical powers collectively from the highest to the lowest. And the plenitude of ecclesiastical power of the pope is among them as an integral part in the whole, and thus it is not greater than or superior to the power of the whole church, as a part is not greater than the whole. If, on the other hand, this plenitude is considered in its height, then without any doubt the plenitude of ecclesiastic power of the pope is greater than and superior to the rest; but now that which is the rest can by no compact constitute a general council, according to what was said earlier, that a general council, as such, necessarily includes the papal authority, whether a pope exists or not; for if there is a pope and he is willing to do his duty in convoking a council, certainly it ought to be authorized by him. If, however, he pertinaciously refuses, to the destruction of the church, then action should be taken as if there were no pope; and the power of assembling itself remains in

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the church itself, and that of providing for itself, and that of ordaining concerning papal power, in the second and third ways, in respect to its allocation and its use; the situation corresponds to that of a chapter and a dean, or a university and its rector.

But the principal difficulty occurs here: what, if the pope is dead or ejected, can this council do? It can, therefore, first constitute one pope for itself in the accustomed way through the election of the lord cardinals; or in another way through consensus; or through the way of the Holy Spirit, if there is a reasonable hope that thus all can be brought to agree upon one candidate; or perchance through the awaiting of a divine miracle, as in the election of Matthew. And concerning this power of the council, that it can make one head for itself, there is no difficulty.

There are many other powers which, if the pope is dead or ejected, the council can exercise either directly or through some organ on behalf of all, such as have often been practised in this council, in regard to various decisions and decrees involving the exercise of coercive jurisdiction: for instance, the summoning and deposition of the pope, excommunication and interdict, the relaxation of rules, the giving of absolution . . . . For we find in the councils of the past, in the time of the apostles and later, that even when there was a living pope it was the council and not the pope that spoke. . . . Finally, in the third place, there are other powers which cannot be exercised except by a determinate subject . . . , and here we can distinguish between those that cannot be exercised except by a pope and cannot in any way be delegated to anyone else, and those that can be delegated, by someone incompetent to exercise them, to someone else who is competent . . . [as a pastor who is not a priest can tell a priest to perform the mass in his curacy]. In the same way, therefore, the council can commit to priests the performance of such things as cannot be done, or at any rate not licitly, either by the council directly or by priests lacking the commission and license of the council.

In this context, we must raise the question whether there is any power peculiar to the pope, so that he can do something of which no other ecclesiastical power is factually or legally capable. And it seems, *prima facie*, that there is no such power, in accordance with the preponderant opinion of the doctors, who say that the power of the order is equal in all priests. And as for the power of jurisdiction, whatever may



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be said, it appears that in default of the pope the council can grant it. . . .

But this line of thought seems to lead to the scandalous and improper conclusion that the church could be well ruled to the end of time without a pope. . . . We answer that, although the general council can do such things at any given time, since the precept that there must be a pope is an affirmative precept whose obligation extends for all time but not at every time, nevertheless the general council neither ought to nor could tolerate the lack of a head for ever, so long as the law stands. Yet, through one bishop acting as its vicar, or through several simultaneously or successively, it can supply the lack of a head when urged by necessity or persuaded by evident utility; and in this sense there is said to be a supplementary plenitude of power in the church. . . .

### Nicholas of Cusa

[The following selections illustrate several of the central principles of Cusa's complex theory of the structure of the church: his theory of the absorptive representation of the community by its head; his theory of the canon law as validated by the consent of the community, expressed either by usage or through its representatives, and as binding upon the pope; his theory of the relation of divine ordination and popular consent in establishing headship within the church; his theory of the church as a hierarchy of offices normally immune from papal interference; and his specific application of this theory of consent to the origin of the papacy. The selections are taken from *De Concordantia Catholica* (ed. Schard, *De Jurisdictione* . . . , pp. 465-676), bk. 1, ch. 6; bk. 2, chs. 14, 15, 19, 27, 34.]

#### BOOK I, CHAPTER VI

. . . . Even as man is constituted of spirit, soul, and body, so in this one body of the church the sacraments are the spirit, and the priesthood the soul, and the faithful the body: for even as the soul adheres partly to the body and partly to the spirit and is the means through which the spirit flows into the body, so also the priesthood is related to the faithful; wherefore the whole priesthood is as one soul in the one body of the faithful. . . . Therefore a ruling, vivifying, and illuminating virtue befits the priesthood. . . . And there is a hierarchic order in this soul, which is the priesthood, in regard to its ruling, presidential charge:

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because, although all members of the upper hierarchy, who are the bishops, are equal in regard to order and pontifical judgment, yet there are grades and distinctions among them in regard to their ruling charge; and in regard to the presidency, it is considered hierarchic on the basis of a certain concordance which relates the one and the many. For there is one episcopacy in which all partake; but there is a differential order in regard to the presidential charge. Certainly all the other apostles shared equally in honour and power with Peter, but Peter was prelate of the others, that, as Cyprian said, there might be unity in concordance. . . . And Jerome said. . . , 'Among the equal apostles Peter was chosen to preside, that occasion of schism might be abolished through the institution of a head.' Thus, even as there is one episcopacy, so there is one chair and one presidency, constituted in hierarchic gradation. . . . And since this presidency was instituted by Christ the Head for the avoidance of schism and the preservation of the peace and unity of the faithful, it has its gradation, to which temporal lordship figuratively corresponds. Whence, according to Jerome, one should notice that even as an army constitutes a captain for itself, and he then, bearing in himself the consent of all, becomes one presidential, public person: so also the bishop is constituted president (*Decretum*, c. 24, di. 93). Thus even as a republic is a common thing of the people, and a common thing is a thing of the state, and the state is a multitude of men brought to a kind of bond of concord, as Augustine writes . . . , so he who presides in the pastoral court corresponds to him to whom a republic is entrusted. Whence all who are under the court are understood to be united in him who presides as if he were one soul and they the body which the soul has to animate. Whence such a people, thus united with their pastor, constitute a church. . . . Whence even as the universal church is the mystic body of Christ, so particular churches are the mystic bodies of those who preside over them as delegates of Christ. . . . And this is one premise of our proposition: that the church is in the bishop through union, and thus the bishop symbolizes and represents them, since he is a public person with regard to that group; and this is a premise of all that will be said hereafter. Moreover, there are gradations within the bishopric, as Leo IX says in the letter he wrote to the two African bishops, saying: 'The order of bishops is one, however much some are set before others. . . . For even as all earthly powers differ from one another by gradations of dignity, . . . so also the

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ecclesiastical powers are found by the holy fathers to be related in a hierarchic order . . . ; in those cities in which the pagans had their chief priests and teachers of the law, primates or patriarchs were established . . . ; where the pagans had their archpriests, the archbishops of the Christians have been established . . . ; where lesser cities had only priests or counts, bishops have been established; moreover, the tribunes of the people can be said to correspond to the priests, or to the rest of the lower order of the clergy; over them all the Roman pontiff is set by divine and human law.' From this it is clear that the presidential ecclesiastical power was superadded to the temporal even as the soul to the body, so that wherever there was a temporal unification in an earthly government there was superadded through the way of peace or concord a presidency to direct men to Christ, that all things might be brought to a suitable mean under one supremely powerful head.

### BOOK II, CHAPTER XIV

A judge ought to judge justly, wherefore if his promulgated decision is contrary to the laws or canons it is automatically null and void (*Decretals*, bk. 2, tit. 27, ch. 1, and other authorities cited in the Gloss). Also, we read that the Apostolic See never made a judgment contrary to the canons (see the letter of Pope Boniface to Zachary which begins '*Consistemus*,' and many statements cited below). In fact, its judgment is reviewed by the plenary council, as will be shown below by the facts and by the authority of Augustine. But there would be no point in reviewing it if all that the pope wished were law, for then he could not make an unjust decision. Therefore, his judgment is necessarily bound by the canons, to which he is subject and by which his decision is tested to see whether or not it is just in accordance with them. Further, the canons have roots in natural right, against which a prince has no power; therefore neither does he have power against the canon which is based on natural right and accessory thereto. And, since this is so, how can we say that it is in the power of a judge to establish canons and statutes? For if it were true that a judge had authority to establish canons by himself, his decision could never be disputed as unjust; for his decision would be law and therefore always just. But, since law ought to be 'reasonable, possible, and not contrary to the custom of the country' (*Decretum*, c. 2, di. 4), we cannot in any court of civil or canon law declare a law that has not been accepted in the custom of the users

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(*Decretum*, di. 4, *Dict. Grat.* 'leges,' etc.). Wherefore, if use approving law is necessary, as this canon says, we cannot justly condemn a defendant by new law, since he could not sin against that which did not yet exist, but must have sinned against an approved law, accepted through custom and use. From this it clearly appears that the law and the canon is the rule of every judge, and that every law and canon is superior to any judging judge. Further, if canons are approved by agreement, use, and acceptance, then the validity of any statute rests on its acceptance. Wherefore the ecclesiastical canons are rightly declared by the common council, for the church is a congregation. One man cannot rightly produce the ecclesiastical canons. From this it follows that we see canons produced in the council by concordant acceptance, consent, and subscription; moreover, the decretals or judicial decisions of the Roman pontiffs, or decisions on dubious points as they arise, have derived their vigour, validity, and justice not from an intrinsically authoritative will, but from the fact that the canons established it as fitting that decisions be so made. . . .

### CHAPTER XV

Now, from the foregoing it is certain that the binding force of all statutes consists in agreement and consent, tacit or explicit, either by acceptance in use or by the pronouncement of those who potentially represent others by a certain embassy or presidency. For even as a bishop and his chapter are said to compose a diocesan church, because that group potentially represents all the other members of that church, in the same way the metropolitan and his suffragans constitute a provincial church, and a patriarch and the metropolitans constitute a patriarchal church. Whence the authority of each group extends potentially through all the members of the representative group. . . .

### CHAPTER XIX

If the laws and sayings of the holy fathers, which say that no man ought to be ordained to a presidential charge unless elected by those over whom he is to preside, were preserved, so that each one might recognize that his presidency originates in those at whose head he is and that he might nourish them in love without pride, then we should see ordained elections in every rank fulfilling what St. Augustine said . . . namely, that Peter arises from a rock, that is, from the church



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of the faithful. Not that the presidential authority that exists in presidents originates wholly in the people; but, as was said above, 'Next, the priesthood, which is like the soul of the church militant.' Moreover, the soul is educed from the potency of matter; but, as regards its rational part, it is from God. Thus the priesthood receives from the inferior people the motive, vegetative, and sensitive power of a presidency, which power comes from the potency of the matter of the subjects, through voluntary subjection; but through the sacraments it receives from God the power of a rational soul, which comes from above; that thus in sweet concordance, by supernal power mediated through extracted and surrendered power, it may flow into the body of the subjects, who are perfected to salutary union with Christ the Head. . . . And this is a beautiful thought: that all powers, spiritual as well as temporal and corporal, are latent in the people in potency, although, in order that the presidential power may be actually constituted, the concurrence of the formative ray from above is necessary to constitute it in being; and I speak concerning ordained power. Even as rightly the earth is the maker of elements, yet when the influence of heaven mediates, various vegetable and sensible things are educed from this potency. . . .

### CHAPTER XXVII

Superiors ought to be obeyed, so long as they do not overstep the bounds within which the power of each one is enclosed. And first we must consider the power of the Roman pontiff, because, as Gregory says (*Decretum*, c. 45, C. 2, q. 7), a reforming council should begin with the head. . . . Whence, if it is done in such a way that every power uses in its government the rules laid down by the universal council, necessarily the best reform follows. . . . All members of the one church and mystic body of Christ have their individual offices, in which they cannot be impeded by others without a disturbance of order. Moreover, a disturbance of order is a disturbance of the whole bond of union of the church, with a resulting diffusion of deformity and sickness into the whole body of the church (*Decretum*, c. 39, C. 11, q. 1). See also the words of Gregory (*Decretum*, c. 1, di. 89), saying that it is noxious and most shameful that one member should usurp the office of another and not distribute ministries to separate individuals. Therefore, neither the head nor any member whatever has the power to usurp the office

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of any other member, if the one whose office is usurped is healthy and alive and innocent of negligence; such usurpation results in an injurious disturbance of the whole body. Thus, if we discover what things befit each member by the ancient rules, we shall see how it has come about that the body of the church is deformed. For it would not be deformed if it were not for the intervention of excess and abuse. And because when the head is sick the other members suffer, the health of those who preside is the health of the subject (*Decretum*, c. 5, di. 61; c. 1, di. 86). Wherefore, no greater deformity can be caused by anyone than is caused by one who through contemplation of his own great power comes to believe that all things are permitted to him and infringes upon the rights of his subjects.

### CHAPTER XXXIV

. . . . Although all the apostles were rectors, pastors, and vicars of Christ, . . . yet the holy doctors affirm that in that pastorate, rectorate, and vicarage Peter had the primacy by more abundant grace, through this fact: that the keys were promised and given to him and, by the words 'Feed My sheep,' the pastorate was assigned to him as representing the whole church. . . . Moreover, that principate of Peter does not consist in superiority in the power of binding and loosing in the penitential court or in the confection of the sacraments; no one has any doubt concerning the latter, nor ought there to be doubt concerning the former . . . because the spiritual judicial power of all bishops is the same, as was that of the apostles, since this flows from Christ by way of the priesthood. . . . Nor was Peter through that primacy superior to the church, since he was named for the church and for its sake. . . . Therefore the superiority of Peter was not superiority over the church, but within it. Whence, although he was the mouth and head of the apostles of the church, and made proposals in its name, as in Acts 1:[15-22], and made answers in its name, as in Acts 2:[38-39], yet nevertheless he was under it as a member. . . .

. . . . Considering the members of the church individually and in themselves, then the prelacy of more abundant grace which was necessary for the prevention of schism and for the good ordained government of the church was, according to the opinion of St. Jerome, committed by Christ to Peter that, even as he was the first of individual members, so he would be servant and minister of all; because, if

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Peter derived his name from *petra* on behalf of the church, and if the church is nothing other than a union of the faithful, there rightly exists a presidency in order to abolish schism on behalf of the union of the faithful. Wherefore the union of the faithful is that for whose preservation and maintenance a presidency over individuals exists. And for this reason the union of the faithful which we call the church, or the universal council of the catholic church representing the church, is over its minister and over him who presides over individual members; and thus I understand the saying of the Saviour, that he who was greater among the apostles distributively ought to be minister of all collectively; because thus they form a church. . . . Also, the point which was raised above—that the power of ruling in the church was not established, as regards the root by which it is from God, in coercion but in ministerial care—is proved by the statement in II Corinthians 1: [24], ‘For we are not lords of your faith, but helpers.’ Whence the Gloss of Ambrose says, ‘Faith does not suffer lordship and coercion, since it is a matter of will, not of necessity. . . .’ Wherefore all spiritual power is properly founded in liberty, not in coercion, as regards that root by which it is from Christ. But, because the principal presidency itself, ordained to that unity for the sake of preventing schism, is from God, then that unity cannot rightly be conserved unless there is some coercion in the ecclesiastical prince himself, but without that dominion by which the princes of the Gentiles dominate. For it is necessary that putrid limbs and feet be cut off, and the eye that scandalizes be torn out from the church, if the body of the church is to be kept healthy. Wherefore that coercion will not be as the princes of the Gentiles dominate, because that kind of domination is through force over bodies and things; but it will be coercion initiated through the free subjection of all or of a majority, and without any punishment that does not tend to salvation. Whence, for this reason, Pope Anacletus and others . . . say that Christ constituted Peter with the concurrent consent of the apostles, and thus this special kind of coercive power of a superior against his subjects is rooted in their election and consent. For they who were at first most free submit themselves to a president by electing him over themselves. Whence, as was often said above, the coercive power of a prince or a law has from this foundation its strength, constituted by the approval of the subjects, by their common consent thereto, whether tacit or explicit. For so it is said: although all power, whether coercive or economic,

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regulative or ordinative, is from above, yet if it is to break out extrinsically into act, regulating or coercing free Christian men, then right rule requires their free subjection, since by the law of the Christian faith and by natural right they are not excluded from the bounds of liberty; in this way . . . all ecclesiastical and spiritual presidency is constituted by Christ through the mediation of human assent. . . .

### John of Turrecremata

[The following passages are translated from the *Summa contra Ecclesie et Primatus Apostoli Petri Adversarios* (Rome, 1489), bk. 2, chs. 41, 70, 71.]

BOOK II, CHAPTER XLI. *Answers to the objections of the adversaries, who say that the Roman pontiff received the primacy from the ordination and disposition of priests or councils*

We must now reply to the arguments of those who say that the principate of the Roman pontiff is causally derived from the ordination of the universal church or of holy councils of priests. We answer that this is false, as is proved by reason and authority.

By reason as follows: it is impossible that the spiritual power by which one is bound or loosed in the soul in regard to heaven should be derived immediately from the person or persons who are bound or loosed by that same power. But the papal power granted to Peter and his successors extends to the binding and loosing of each and every member of the church militant. Therefore it is impossible that the power of the keys of the church which was granted to Peter is causally derived from any member or members of the church taken collectively or disjunctively, or even from the church as a whole. The conclusion follows clearly; the premise is, in the main, obvious also, in regard to spiritual power, of which we are speaking. . . . Thus, although the consent of the people can make a judge in temporals it cannot make a judge in spirituals. For no consent of a people which previously had no power of jurisdiction can constitute for itself a confessor or judge able to excommunicate. . . .

CHAPTER LXX. *Objections against what was said above: that in the church only the Roman pontiff has plenitude of power*

Although the thesis maintained in chapter 43 above, that in the Roman pontiff alone resides the plenitude of the power of the church,



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was fully demonstrated by the testimony of the holy fathers and by arguments, nevertheless the adversaries attempt to attack this in many ways, presenting this thesis: that the plenitude of the power of the keys is not only in the pope as head and pastor of the universal church but also in the universal church itself and in the universal council. But there are two variants of this theory.

For some of the masters who were in the Council of Constance, so far as one can infer from their treatises, say that the plenitude of power is indeed in the pope and in the universal church and in the universal council representing it, but that it is in each one in a different way. On behalf of this theory they distinguish three ways in which something can be in something. First, as in a subject, as a virtue is in the soul, and as an accident is in a substance, subjectively. Second, as in an object, as an effect is said to be in its cause or end, because it tends to that as to its final object. Thirdly, as in an image, as some visible thing is said to be in a mirror, or some doctrine is said to be in a book, because it is there representatively. Therefore, as they claim, the plenitude of power is in the pope in the first way, as in the subject who receives it and ministerially exercises it. In the second way it is in the church, as in the object which causally and finally contains it. In the third way it is in the general council, as in the image which represents it and regularly directs it. The first is clear, because the pope is, properly speaking, the minister who subjectively receives this power and dispenses it administratively, in accordance with Luke 24:[26], 'Who is greatest among you, let him be as a minister.' The second is clear, because the plenitude of power does not causally and finally exist for the sake of the pope, but rather the pope and his power exist for the sake of the church and are ordained to it as to an end: that is, to its edification, because, in accordance with the statement of the apostle, II Corinthians, tenth and last chapters [10:8; 13:10], 'The Lord gave this power for the edification of the church and not for its destruction.' The third is evident from the same saying of the apostle, because if the pope uses this power for the destruction of the church the general council would serve as the image or mirror which represents the said universal church and in its name and stead coerces, rules, directs, and even punishes the abuse of this plenitude of power. Thus they argue. But their position and conception seem to us, always saving better judgment, to be altogether void of understanding, because it

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implies many things which cannot all be true at once; moreover, the parts contradict one another. Further, they imply a contradiction. For first, when they say that the plenitude of power is in the pope as in the subject who administers it and in the church as in its final object and in the council as in an image, they contradict their own opinion that the plenitude of power is more principally and more excellently in the church or in the council than in the pope. This is obvious, since any power is said to exist more properly and more principally where it exists subjectively and administratively or dispensatively, as power exists in a craftsman or the leader of an army or the master of a work, rather than in the object or the image: for instance, the power of mediating has its being more properly and more principally in the physician rather than in the body of the sick person for whose healing it is ordained, and rather than in the book of medicine; moreover, the art of building has its being more properly and more principally in the craftsman than in the house for whose edification it is ordained. They say another false thing: that the church is the final object of the papal power. For although the papal power was granted for the edification of the church, yet the ultimate end at which that authority aims is not said to be the church but that very beatitude to whose pastures the universal church is . . . to be directed and led by its pastor and rector who is the pope, in accordance with the saying in the last chapter of John [21: 16, 17], 'Feed My sheep.' Further, it seems to be false that the plenitude of power is in the council as in an image or mirror; but it should rather be said to exist in this way in the word or gospel of Christ, by which the whole church is ruled. . . . The second position involves a contradiction, for when they claim that there is one and the same power in the pope and in the universal church and in the council, they contradict their statement that the universal council can correct, coerce, restrain, and punish abuses of papal power. This is clear, for since power of this sort cannot be in the pope except as one who is of higher power, according to [*Decretum*], c. 4, di. 21, it is impossible for the council to do such things if it does not have more than the same power as the pope. Their third position involves a contradiction, for when they say that the plenitude of power is in the council, not as in a subject and administrator but as in an image or mirror, they contradict their statement that the council can punish and restrain the abuses of the pope and correct him when he abuses his power. This is

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clear, because, although someone who has no authority of jurisdiction enabling him to correct another can advise and direct him by his counsel, yet no one can coerce and restrain and things of this sort, by exercise of discipline which is an act of justice, except him in whom the power of jurisdiction exists as in a subject administering and exercising it, as is manifestly evident, for 'Whose is the power, his is the act,' says the Philosopher. For these reasons, that position of the adversaries seems to us, as we said above, to be void of understanding.

Others, however, among the new masters who were at Basel, presuming to be wiser than those who were at Constance, being greedy for glory and rule, have said that the plenitude of power was in the church not only as in the final object or in the council as in its image, as the latter had said, but as in the subject administering and exercising it, assuming to themselves, as their actions have shown, every administration and exercise of papal power. For they say that the power of the keys in its fulness was given to the universal church itself, which is called a collection of all the faithful, conjunctively in all its members, and given to it more principally than to the pope, in the same sense as that in which we say that some authority of exercising jurisdiction or of holding an election was given to a college. . . .

CHAPTER LXXI. [*Answers to the Basilean position. The 'conclusions' which Turrecremata directs against the Basileans follow from his analysis of the unity of the church, for which see pp. 239 f. above.*]

. . . . Fourth conclusion: the power of ecclesiastical jurisdiction was not given to the whole church as to a corporation or to all the members of the church joined together. This conclusion is proved from the preceding as follows. No power can belong to any corporation or to all its members together which the majority of that corporation is incapable of holding; but the majority of that corporation is incapable of holding the power of ecclesiastical jurisdiction, whether in the court of conscience or in external judgment. Therefore this power cannot be said to belong to the universal church, as they claim. The conclusion is logically correct; the major premise is already known, and can be inferred from [*Decretals*], bk. 1, tit. 4, ch. 8; bk. 2, tit. 28, ch. 45; the minor premise is apparent, first, from the conclusion of the foregoing; next, because the church . . . contains two orders, laymen and clerics,

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as two sides of one body, of whom the majority, which consists of laymen, is incapable of holding ecclesiastical jurisdiction. . . . This appears also more manifestly in regard to women, who, however holy they may become, are incapable of receiving the keys, for a woman is not a suitable subject of rulership, but rather of subjection. . . . Now it does not seem to make sense to say that the power of the keys was given to the church as a corporation or to all its members together, but that the faithful laity, men and women, who not only are true members of the body of Christ which is the church but also compose the greater number or majority, are excluded from participation in the aforesaid power. Secondly, the aforesaid conclusion is proved as follows. In any corporation which receives any power as a corporation, all members of that corporation participate equally in the right of that power. This is clear, since all canons participate equally in the exercise of any power which they hold as a college; but not all believers, nay, not all clerics, nor even all priests, who are included within the scope of the body of the church, participate equally in the right of the power of the keys, as is obvious, since otherwise there would have been no distinction of power among the apostles, nor among greater and lesser priests, nor would Peter have been more head of the church than any one else: doctrines which are not only false but also condemned as heresies by the church. Therefore it follows that this power of the keys was not given by Christ to the corporation of the church as such: that is, to all its members together. The conclusion follows correctly from its premises. Thirdly, it can be proved in this way. Whenever any power or any privilege has been given to any corporation in common as a corporation, members of that corporation cannot carry out or exercise that power except with the concurrence of all members of that corporation together, or, at least, after all members of that corporation have been duly convoked. This is obvious, as is inferred from [*Decretals*], bk. 1, tit. 6, chs. 35 and 42. But if the power of the keys of jurisdiction was given to the universal church in common as a corporation, it would follow that neither pope nor prelates of the church could carry out or exercise that power unless all the faithful, both laymen and clerics, had been at least convoked. But this is clearly false, since this procedure is not followed in the church, nor are all the faithful summoned even to universal councils, nor all clerics, nor even all priests. Nor is it regarded as a wrong to them if they are not



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summoned. Moreover, the pope does not require the consent of anyone else in order to execute the power given him, nor do the other prelates. Therefore, it is not true that the power of the keys was given to the whole church in common or to the whole college of clerics or of priests as a corporation. Fourthly, the conclusion is proved in this way. Whenever any power is given to all the members of a corporation as a corporation, since all regularly have equal shares in the right of that power, the decision of the majority of the community takes precedence over that of the minority; this argument is taken from [*Decretals*], bk. 3, tit. 11, ch. 1. If, therefore, the power of the keys was given to the body of the universal church, or to the college of clerics or priests in common, it would follow that the majority of this corporation, that is, the laymen, or the minor priests or clerics who form the majority of the college of clergy or priests, would, in the last analysis, control the government of the church and would have the power of making decisions in the name of the whole church, which is absurd, according to [*Decretum*], c. 4 and c. 6, di. 21.

Fifth conclusion: the plenitude of the power of the keys of jurisdiction was not given to the universal church as one corporation or to all its members jointly. Although this conclusion is apparent from the preceding, since the proof that the power of the keys was not given to the universal church as a community includes the proof that the plenitude of the power of the keys was not given to it in that way, nevertheless there are other proofs. The first is as follows. The government of the church was instituted by God as a monarchy. . . . This is evident, since the monarchic government is considered more noble, both by philosophers (as appears in VIII *Ethics*, [ch. 10], and III *Politics*, [ch. 11]) and by the theologians, and it is to be believed that God instituted the nobler kind of government for his church; but in the monarchic principate the plenitude of power is not located in all the members or in the community, as it is in the political régime, but only in one man: namely, the prince, who rules alone. Therefore it follows that by the institution of Christ the plenitude of power was not given to the universal church in all its members but in one member only: namely, the Roman pontiff, who was instituted prince of the church by Christ. . . . The second proof proceeds as follows, confirming the argument just made. If the plenitude of power is in the whole universal church, it follows that it is not in the pope. The conclusion is false,

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since it is contrary to the testimony of the holy fathers, . . . therefore the antecedent is false, since only truth can follow from truth. This syllogism is correct, because if the plenitude of power resides in the whole multitude of the Christian people, called the church universal, which is the totality of all believers, it follows that the principate of the church is political and not monarchic and consequently that the plenitude of power is to be located in no one except the whole community itself. . . . The fifth proof is this. It is impossible that in any one corporation prelate and subjects would have the same plenitude of power. This is clear, since it is illogical to say that the prelate and subjects could both have, in the same plenitude, the characteristic which constitutes a prelate or superior. . . . Sixthly, the following argument confirms the preceding. The plenitude of power that is located in the church is either the same identical power that is located in the pope or it is a different power. But it cannot be said that it is a different power, because in that case there would be two supreme powers or plenitudes of power, which is impossible: first, because in any genus there is only one superabundance; also, because a plurality of principates is not good, as is said in XII *Metaphysics*; also, because the unity of the church does not allow two supreme powers. Nor can it be said that it is the same identical plenitude of power, because, if so, then the pope would not be superior and set over the church, nor could the church be called superior in power to the Roman pontiff—as, however, the adversaries would have it. This is clear because, if an equal has no command over his equal, still less can there be command where there is identity of power. However, some of the adversaries answer this reasoning by saying that although the power is the same, yet the church has jurisdiction over the pope because, as they claim, that power exists in a more excellent way in the church; for it is in the church invariably and indeviably; this is not worth anything. First, because it presupposes a falsehood, because, as we have already seen, the plenitude of power cannot exist subjectively and formally in the corporation of the church, but only in the Roman pontiff, and consequently, as was proved in chapter 70 above, it cannot exist in the corporation of the church in a more excellent way than in the Roman pontiff. Secondly, because, even granted that the same identical power of the church is in both as in one subject, it is impossible to understand that the church would have jurisdiction over the Roman pontiff or *vice versa*, and if the same

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identical power is in the same identical subjects at the very same time, it is impossible to make such a comparison as that it is in one in a more excellent way than in the other. Further, granted that it is possible to make this comparison, then, since the difference between existing variably and existing invariably does not increase or diminish the power itself, it cannot be argued from such a difference that the one has jurisdiction over the other, otherwise he who was more holy or who had a more long-continued power in the church would be said to have greater jurisdiction, which is false; in fact, it has been condemned among the errors of John Hus and of Wyclif. . . .

## Chapter Seven

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### THE PROBLEM OF THE EMPIRE

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PERHAPS no facet of medieval political thought has had more attraction for modern minds than medieval discussion of the unification of Christendom into a single political community. The notion that men once dreamed of achieving peace through the unity of a world empire—even though in practice that dream never came near fulfilment—has had a pathetic charm for modern man, committed, perhaps irreparably, to the wars of sovereign states. It is not simply because Dante was also the author of the *Divine Comedy* that his *De Monarchia* is often regarded as representing the best and most characteristic medieval thought: it is also because we are haunted by a wish to believe that there was an age in which such dreams could be widely dreamed.

The reality, of course, was far more complex. In medieval fact, the dominant trend was toward the building of the separate nation states; and this fact was to a considerable extent reflected and approved in medieval theory. While the idea of a universal empire certainly played a role in medieval speculations, that role was limited. It touched only certain minds, and few of those deeply; much of the best of medieval thinking rejected or ignored it; its importance in speculation was limited to a period in which it was all but obvious that it could have no basis in fact. Moreover, much of the loyalty which did focus on the concept of empire assumed an empire not necessarily defined in universal terms.<sup>1</sup>

The foundations of medieval thought on the empire were laid early.



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Until the recovery of Aristotle, there were few sources of ideas for medieval minds that did not take for granted a world imperially organized. For the New Testament and the Fathers the existence of the Roman empire was simple fact. Jesus himself had rendered to Caesar the things that were Caesar's. The wide scope of the Roman empire and its amazing achievement of the long-enduring *Pax Romana* could not but grasp the imagination of future men. Even pagan Rome had the lustre of its heroic virtues. After the empire had accepted Christianity, early popes had worked in cooperation with it, and the idea that the universal empire was the divinely-appointed counterpart to the universal church—that it was one of the two great powers by which this world was ruled, protecting the work of the church through its wielding of the secular sword—was prominent in patristic literature. Patristic interpretation of various eschatological passages in the Bible described the empire as postponing the coming of Antichrist.<sup>2</sup>

On the other hand, the otherworldliness of early Christianity prevented any thoroughgoing patristic glorification of imperial organization as such. What did it matter, as Augustine said, under whose rule—so long as he was not forced to do impious or unjust things—the brief life of mortal man was lived? For Augustine, whose *City of God* was a chief source for some medieval strains of thought on the empire, no pagan state could be a true *res publica*; the Roman empire had been the last of the series of great pagan kingdoms, which had their place in the scheme of divine providence, but which were essentially contingent on human sinfulness and therefore essentially transitory and unimportant. The Romans, indeed, had been granted their empire by God in recognition of their early secular virtues; it provided a degree of order and justice that was useful in its time and that might serve as a weak index of the ultimate peace of the heavenly kingdom; but it represented only a relative and imperfect kind of felicity compared to the true felicity of the city of God.

There was, according to Augustine, no intrinsic good in extent of empire. A large empire was like a rich man, 'anxious with fears, wasted with troubles, burning with greed, never secure, always unquiet,' always hoping for the quarrels of his enemies, and augmenting his cares and his wealth at the same time, while the small state was like the man of moderate means, 'self-sufficient in his compact little patrimony,' living modestly and contentedly with a secure conscience,

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'enjoying the sweetest peace with his kindred, neighbours, and friends.' A large empire was, at best, a necessary evil, caused simply by the wickedness of neighbouring states which provoked just wars and their own ultimate subjugation; 'if human affairs were happier, all small kingdoms would rejoice at living in harmony with their neighbours, and thus there would be in the world a great many kingdoms of peoples, as there are in a city a great many families of citizens.' For the just to rule over the unjust was felicity only in comparison with the worse alternative, that the unjust should rule over the just; and it was felicity rather for those who were ruled than for those who ruled.<sup>3</sup>

Augustine wrote at a time when men were staggered by the apparently imminent death of the Roman empire; but, as a matter of fact, it died slowly. Medieval historians scarcely observed that its decay had ended an epoch of world-unity. It lingered continuously in the East; it was nominally resurrected in the West. The Carolingian empire, which had been consciously and effectively sword and shield for Christendom and for the church, remained a lively memory in medieval legend and history; it was succeeded by the German empire. It was natural, then, that medieval minds should feel that some sort of empire was a necessary article of furniture in a Christian world and should be haunted by a vague fear that if the empire should ever be completely dissolved that dissolution might be the prelude to all sorts of fantastic horrors.

It was also natural that this consciousness of continuity with the past should be strongest in the German empire, which called itself a Roman empire and regarded itself as the heir of all the ancient imperial claims in the West. Its emperors used the old resounding titles; they appealed to their inherited imperial rights in their dealings with Italy and with the papacy; they were often guided in their policies by the ideal of reviving the ancient powers and the ancient glory. This was particularly true of the Hohenstaufens, with whom it was supported by the revived study of Roman law. 'He thought nothing better or more pleasurable,' said the biographer of Frederick Barbarossa, 'in all the time of his reign than that the empire of the city of Rome should through his toil and labour flourish and blossom with its pristine authority.'<sup>4</sup> But even for the ambitious Hohenstaufens the serious attempt to make the ancient empire bloom again was restricted to their relations with Italy and the papacy. The lofty titles and claims to world-authority which might

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appear in documents destined for German or Italian eyes were sometimes pruned out of copies sent to other realms<sup>5</sup>; the western kingdoms, for their part, treated the empire as no more than *primus inter pares*.

Another medieval kingdom, that of France, could of course also trace its lineage to the Roman empire by way of the Carolingians. If the Germans thought of Charlemagne as a German, the French conceived him as a Frenchman. But the imperial heritage in France normally led to no project to dominate Christendom; it rather served to buttress the French consciousness of independence from the Germanic empire and a dawning sense of national pride. Italians, too, could claim in their own way to be the heirs of the ancient empire—which, after all, had been originally Italian. But in medieval Italy there was no central authority to revive and wield such claims. When in the fourteenth century Italian patriotism sometimes turned to thoughts of empire, it turned to the German empire as the only champion in the field and merely insisted that that empire base itself on Rome.

Of all the links with the empire of the past, Roman law was perhaps the most important. In Italy, in Spain, and in the south of France, it survived in a debased form as 'the custom of the country.' After the twelfth-century recovery of the *Corpus Juris*, the law of the imperial period became one of the most important fields of university study. In Roman law the student continually met the fundamental assumption of a world organized under a single emperor on whose supreme authority the validity of the whole system of law depended. The problem of reconciling that assumption with an actual world of separate states was postponed by the fact that the early specialists in Roman law—the glossators—tended to confine themselves to understanding and commenting on the law itself without raising questions of its bearing on contemporary institutions. But the study of Roman law gradually accustomed them to the ideas that the empire was legally indestructible, that no emperor could prejudice his successors, and that the emperor was supreme over all the parts of the Roman empire. Supporters of imperial claims learned to interpret the authority of other rulers as delegated from the original and all-comprehending imperial power, and to explain specific exemptions from imperial authority as resting on revocable privilege conceded by the emperor.

The potential challenge of Roman law to the medieval world was sufficiently recognized to raise the question whether it should or should

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not be accepted as a field of university study. It was excluded from the University of Paris on the request of Philip Augustus, on the grounds that 'the Ile de France and other provinces' did not use the laws of emperors. It was studied elsewhere in France: at Orleans, for example, and at Toulouse; the charters of those universities specifically stated that the study of Roman law was not to imply its reception as valid law for France, but simply its value as a mental discipline.<sup>6</sup> In England, where the indigenous common law became a tough and unified system under the initiative of the itinerant royal judges, lawyers were trained in the Inns of Court and royal officers were increasingly selected from this source. But France provided no parallel common law. Of necessity, the superior rationality and organization of Roman law compelled attention; and, also of necessity, the kings of France drew on the ranks of civilists to fill the positions created by an expanding royal administration. And the lawyers who surrounded the French kings began, at first without much consciousness of the implications, to apply to them the attributes and powers of emperors. In Italy, of course, the study of Roman law found no serious obstacles; and the Hohenstaufens naturally welcomed the support which it gave to their ambitions. The relationship of lawyers and emperors was reciprocal. Civilist theories and Hohenstaufen ideals met because both alike were based on the Roman past and, as the civilists supported the emperors in their practical endeavours, so the very existence of the emperors supported the civilists in their thinking.<sup>7</sup>

Another potential source for a theory of universal empire was the general medieval consciousness of the unity of Christendom. But in the earlier Middle Ages there was no clear conviction that the unity of the *respublica Christiana* needed to have political expression. Even through much of the thirteenth century, medieval theologians and canonists tended to be content with a world of many distinct and limited lordships; they had no craving for unity that could not be satisfied by a vision of an orderly society in which separate authorities functioned cooperatively and harmoniously each in its own divinely-established sphere. As Woolf points out,<sup>8</sup> throughout this period the Christian commonwealth was not conceived as a state, but as a church. The phrase '*ecclesia et respublica*' was used without the suggestion of an antithesis and without the inference that the universal organization and control of the church as a spiritual institution needed to



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be paralleled by the universal organization and control of a secular empire.

On the other hand, however limited in scope might be the secular control of the emperor as ruler of his empire, it was felt that in his special relation to the church he had powers and duties whose implications were as broad as Christendom. For he was not merely a secular ruler, but of all secular rulers the one regarded as particularly destined to be sword and shield of the church. This idea was given outward form in the ceremony of the papal consecration and coronation of the emperor. Its precise meaning in terms of legal rights and obligations was extremely vague and, from the time of Gregory VII on through the Hohenstaufen empire, a matter of continual dispute. There were precedents for imperial intervention in ecclesiastical affairs: on their own initiative, emperors had summoned church councils, deposed popes, organized and controlled papal elections; and there was a traditional feeling that in those emergency situations in which the regular machinery of the church was manifestly incapable of achieving the ends for which the church existed, it was the emperor's right or even duty to act for the welfare of Christendom.<sup>9</sup> On the other hand, the papal interpretation of the emperor's role as 'defender and advocate of the church' increasingly repudiated his right to take any action in ecclesiastical affairs except under the guidance of the pope, while continuing to emphasize that he had a particular obligation to wield his secular sword against heretics and other enemies of the church as papal guidance directed; and, because of the special importance of the imperial role for Christendom and the church, the papacy claimed that it was its right and duty to depose unworthy emperors or to refuse to crown unworthy candidates.

Through the age of Innocent III, this ambiguous bond between pope and emperor remained unformulated in legal terms. It involved no papal claim to a general temporal suzerainty over the empire. There were indeed materials for such a claim. There was the Donation of Constantine, the authenticity of which no one questioned, though there was no general agreement on its validity or its scope.<sup>10</sup> There were the historic facts of papal intervention in establishing the Carolingian empire and in reviving the empire in Germany under Otto the Great. But these materials could not be profitably used until in the course of the thirteenth century they were united with the new and

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radical principle that all authority, secular as well as spiritual, had been originally granted by Christ to Peter and his successors.

Meanwhile the papacy certainly had no interest in deducing from the universal implications of the emperor's role in the church the desirability of universalizing his temporal empire. Imperial ambitions, focused as they were on Italy, were a direct threat to papal independence. Where secular matters were concerned, papal policy consistently recognized the independence of the *civitates et regna* of Europe, and treated the empire as simply one of the various monarchies in which temporal authority was embodied. The independence of France was explicitly noticed in the decretal *Per venerabile*<sup>11</sup> of Innocent III: 'the king of France recognizes no superior in temporals.' Neither for the empire nor, as yet, for itself did the church claim a universal temporal authority.

Thus through the age of Innocent III the idea of universal empire played only a slight role in medieval thought. It was explicit only in the glosses of the civilists and some of the manifestoes of the emperors; it was practically effective only in encouraging and implementing the emperors' Italian claims; yet it was latent in many of the traditions and assumptions common to medieval minds, and in the succeeding period it was to become a controversial issue of considerable importance.

Paradoxically enough, it was the collapse of the Hohenstaufen empire, and of whatever potentialities it might have had, that brought the general problem of empire into medieval discussion. The struggle between Frederick II and his papal opponents; the disorders and uncertainties of the Interregnum; the revolution in papal policy caused by the rise of France to the hegemony of Europe; the attempt of the popes in Avignon to maintain control of a reconstituted empire becoming conscious of its own national character—all these in turn presented practical issues which forced an explicit examination of the necessity for an empire, its necessary characteristics, its inherent relations with other powers. Thus, in the latter part of the thirteenth century and much of the fourteenth, specific political issues to a large extent determined the position taken by each participant in the theoretical debate. And although, in the course of that controversy, the universality of the empire was defended at one time or another by Germans, Italians, and spokesmen for the papacy, their original motive force was not an

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international consciousness—certainly not an international consciousness of the modern type—but rather a particular sensitivity to the interests of Germany, Italy, or the papacy. Circumstances might enforce a temporary fusion between particular interests and the ancient imperial tradition; but, to the extent that the defence of imperial authority was a reflection of actual political issues, those issues were simply new variants on the perennial medieval theme: the struggle between the development of the all-embracing papacy and the development of the particular secular states.

Other factors, however, besides the reflection of partisan interests entered into the debate over the empire. The Roman tradition had a life of its own. Again, for many writers, a primary concern was the safety of Christendom. Moreover, the intellectual climate of the period matured the tenuous traditional concepts into intellectual systems. For some minds, at least, it was no longer possible to accept the premise of a universal Christian commonwealth without asking whether or not such a unity needed institutional embodiment; it was no longer possible to assume both the independence of western kingdoms and Italian city-states and the comprehensive overlordship of the empire without inquiring how such a paradox was to be resolved. In an earlier age in which no ruler had ruled so far as he claimed, one had not needed to care whether or not a remote and ineffective emperor was perched at the top of the pyramid. But the development of states accustomed men to think of authority as embodied in working institutions and spread out over definite territories, and the question of imperial rights thus became an intelligible if difficult question. The intellectual period whose beginning approximately coincided with the Interregnum was the age of lawyers who had got beyond the mere glossing of their texts and were attempting to define their bearing on actual institutions. Scholastic theologians were demanding of themselves a similar comprehensiveness and clarity. Among the theologians, the Augustinian notion of peace secured by the harmonious functioning of a variety of powers in their divinely-established spheres was being blended with the Aristotelian notion of an order based on the relation of means and ends, secured by the conscious direction of a guiding head. And, as secular ends were seen to have their own values, the notion of an empire which was a temporal power within the church could be supplemented by a new notion of an empire correlative with

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the church, claiming a world-wide sway and independence based on the world-wide values it might serve.

The reformulation of traditional ideas of the empire began in the course of the long struggle between the papacy and Frederick II. On the imperial side, it involved an increased insistence on the independence, the divine origin, and the peculiar destiny of the empire. Frederick II asserted that God himself had established the empire 'over kings and kingdoms' and that the emperor had no temporal superior: in his attempt to rouse German support in 1239 he appealed both to a nascent national pride and to a supranational dream. 'Arise, therefore, unconquered Germany; arise, O German people! Defend for us our empire, through which you are the envy of all nations and hold the monarchy over all dignities and the world.'<sup>12</sup> But in his appeals for the support of other kings, he attempted to show that his cause was essentially theirs, since they stood on a common footing as temporal powers owing only spiritual allegiance to the pope. Technically, there was nothing new in his position, though it has been suggested that his haughty attitude toward the pope, 'whom we confess to be our lord and father in spirituals, provided that he duly recognize us as his son,'<sup>13</sup> taken together with his endeavours to organize control over the clergy of his own kingdom, represented a potential caesaropapism on the Byzantine model; that for him the dignity of the emperor, responsible to God alone, 'had become a religious dogma.'<sup>14</sup> Frederick failed to arouse the support of theologians; he did, however, stir up considerable national resentment, in Germany and elsewhere, against the encroaching policies of Rome.

Meanwhile—and also at first without attention from the theologians—Gregory IX, and, more fully, Innocent IV developed the thesis that in defying the apostolic see Frederick was guilty of revolt against an overlordship not only spiritual but also temporal. Christ had originally bestowed on Peter and his successors both spiritual and secular authority; this authority had been recognized by the Donation of Constantine, through which Constantine had humbly submitted to the apostolic see a power essentially tyrannical, 'permitted, not granted,' and had 'received from the Vicar of Christ the divinely-ordained imperial power'<sup>15</sup>; the papacy had later transferred the empire, first to a Greek dynasty, later to the Germans in the person of Charlemagne, 'but without detracting from the substance of its own jurisdiction';



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the exercise of the imperial sword was given each emperor at his coronation by the Roman pontiff, to whom he was thenceforth bound by a relationship of fealty and subjection. Therefore, 'you are convicted of derogating from the right of the apostolic see and from your own faith and honour when you do not acknowledge him who made you what you are.'<sup>16</sup> Innocent III, in the decretal *Venerabilem*,<sup>17</sup> had said that the rights of the electors must be respected by the papacy 'since that right and power had come to them from the apostolic see,' as a consequence of the papal transfer of the empire to the Germans. He had claimed as regular rights for the papacy only the rights to scrutinize the worthiness of the candidate, to refuse to confirm a flagrantly unworthy candidate, and to decide between candidates in case of a disputed election. These rights might well be regarded simply as necessary implications of the papal function of consecrating and crowning the emperor. But Innocent IV added the claim that the papacy could directly appoint an emperor if the electors were negligent in performing their duty, the claim that during the vacancy of the empire the imperial rights devolved on the pope, and the general principle that all this papal control was derived from an original and continuing overlordship.<sup>18</sup> In the later thirteenth century, this general thesis was to be elaborated by other great canonists, such as Hostiensis and William Durand, and by some theologians, of whom the most important was Tholommeo of Lucca.

The final collapse of the Hohenstaufen empire brought home the problem of the empire to minds which might never have been concerned over it had some sort of empire continued to exist. That collapse had been effected by the papacy. It left behind, in Germany and Italy, a vacuum in which local aggressions and papal manœuvres continued to further a sense of insecurity which did not cease with the end of the Interregnum. For the election of Rudolf of Hapsburg was no final answer to the question of the fate of Germany. A variety of schemes succeeded one another in the papal curia; there was a project of partitioning the empire, conceived in the cool spirit of *real-politik*; there was some thought of a new transfer of the empire to French hands; the papal insistence on control of elections was a challenge to German interests and German pride. And in Italy the Interregnum continued. Thus Germans and Italians might naturally turn to a demand for a revived and independent empire as the only possible basis of

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peace; and such a demand might naturally be fortified by systematic assertion of the unique role of the empire. In this spirit Jordan of Osnabrück called upon the Germans to take care lest the destruction of the empire open the way for the coming of Antichrist; and his continuator, perhaps alarmed at the project of a French emperor, marshalled arguments to show that for the salvation of Christendom the empire must be German. So Engelbert of Admont discussed the problem of the empire with his friends and defended the principle of imperial control in a treatise whose cool and scholarly tone did not entirely disguise the strength and seriousness of his convictions. So Dante dreamed that Henry of Luxemburg might 'straighten Italy,'<sup>19</sup> and in his *De Monarchia* tried to show that by God's plan the empire must be based on Rome.

The first chapter of the *De Prerogativa Romani Imperii*,<sup>20</sup> probably written as a self-contained treatise by a certain Jordan of Osnabrück during the Interregnum, urged the Germans, 'to whom the government of the world and of the Roman church has been assigned,' to act in recognition of their great and responsible destiny, and urged the German princes, especially the electors, to recognize the dangers which would follow the destruction of the Roman empire. The author pointed out, with a little quaint history, that the *imperium* was as properly German as the *sacerdotium* was Roman, then returned to the theme of the threatened destruction. Roman pontiffs and German princes alike, he said, would be held responsible for the ruin of the empire, which would open the way to the coming of Antichrist; and this he apparently regarded as imminent, having no faith in the prospect of the reform he so urgently demanded.

The succeeding chapters, obviously written after the election of Rudolf of Hapsburg and probably by a different author, have a somewhat more optimistic tone. Their chief concern seems to be to urge the importance of preserving the empire in its traditional role and to demonstrate that by divine ordination, as evidenced by history, the empire must belong to the Germans. By Germans the author meant particularly the Germans of the Rhineland; the election of the Hohenstaufens, who based their government on outlying frontier regions, was for him the beginning of the empire's decay. By an elaborate scheme of geographical and historical analysis, he showed that Charlemagne was a true German—a Frank of the Rhineland—in distinction

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from the 'gross' eastern Franks who migrated to Franconia, and from the 'mixed and delicate' *Francigenae* of the west, descendants of Frankish fathers and Gallic mothers. To Charlemagne, king of the Franks, the Roman empire was transferred by the papacy, and Charlemagne by divine inspiration ordained that it should thereafter be elective among the Franks, or Germans; to balance the picture, he gave the *Francigenae* an hereditary kingship, owing homage to no temporal superior, and the *studium* of philosophy and liberal arts. Thus in the Christian commonwealth three functions—the maintenance of the faith, the defence of the faith, and the demonstration of the faith—were distributed appropriately among the three great peoples of Europe, the Romans, the Germans, and the French, with due regard for their national characteristics and for their supposed rank as descendants of senior and junior branches of a Trojan line. On the preservation of that distribution and of a happy concord among all three the welfare of Christendom and the exclusion of Antichrist depended.

It seems clear that for the author the validity of this distribution of functions ultimately depended on divine disposition and the fact that 'a due and necessary order required it.' The transfer of the empire to Charlemagne by the pope and the testamentary decisions of Charlemagne entered into the story, but it was the inherent symmetry and reasonableness of the plan itself that commended it to perpetual respect. This was not a lawyer's concept; and the empire discussed here was not the empire of the civilists or of such canonists as Innocent IV; it was the traditional Christian empire, a necessary office within the Christian commonwealth, sword and shield of the faith, bulwark against Antichrist. Moreover, the existence of the empire was entirely compatible with the independence of France; for the empire was universal only in the sense that its function—like those of Roman piety and French scholarship—was coextensive with Christendom. For political theory in the more technical sense, the treatise has little significance, but it is a striking illustration of what was perhaps the most deeply-rooted and persistent of medieval ways of thinking about the empire.

When we turn to two other pleaders for the empire—Dante and Engelbert of Admont—we find them aware of intellectual problems which had never occurred to the fervent and conservative minds of the authors of the *De Prerogativa*. For both Dante and Engelbert, a major problem was to relate the traditional theme of empire to the Aristotelian

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concepts which had become a necessary part of scholastic political thought. For Aristotle, of course, the test of statehood was self-sufficiency, and the ideal state was the compact *polis*, containing within itself all that was necessary for life and the good life. To adapt Aristotle's teachings to the medieval kingdom or city-state, which like the ancient city-state could seem the next step in a hierarchy which began with the household and the village, was comparatively easy; but in thinking about a kingdom conceived as a *polis* there was nothing to lead one's thoughts on to an empire. Thus Aquinas had ignored the imperial question; and several later Aristotelians, especially such partisans of the papacy as Aegidius Romanus and James of Viterbo, ignored it or gave it only the slightest mention. Both Dante and, though not always consistently, Engelbert conceived of the empire as a universal authority; they therefore had to show cause for carrying the hierarchy of political units above the city and the kingdom.

Dante approached the problem through an analysis of human ends: there were particular ends for household, village, city, kingdom, but there was a general end for all mankind, the full actuation of the potentialities of human reason. The fulfilment of this end was a cooperative social process; it required peace; for universal peace, mankind must be organized under a single monarchy—on the principle, already familiar in typical arguments for kingship, that the existence of a common end demanded the establishment of a single ruling will to direct its subjects to that end.

Many Aristotelians agreed with Dante that the rational life was the common earthly end of all humanity.<sup>21</sup> But neither Aristotle nor, for instance, Aquinas had concluded that the existence of a common end demanded a political unit of wider scope than was necessary to assure self-sufficiency. What Dante was implicitly saying was that the small community was not really self-sufficient, since it could not guarantee the peace without which the good life was impossible; and it is this that has endeared him to modern internationalists, for whom the problem of peace looms up so much larger among political problems than it did for Aristotle or Aquinas. But it may be noted that Dante attempted no analysis of the practical reasons why a world of several independent states could not attain peace—nor of why an empire could. We know from his other writings that Dante was acutely aware of the actual Italian politics of his day; but his assumption that an emperor could



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bring peace to Italy had only a *prima facie* plausibility. In the *De Monarchia* the arguments with which Dante supported his faith in an emperor as a maker of peace were formal and *a priori* in the highest degree. Essentially, they amounted to so many variations on the principle that unity would make unity, and the claim that a universal ruler would necessarily be exempt from the vitiating influence of particular desires.

If we ask how Dante conceived the internal structure of his universal empire, we find him equally far from interest in political realities. One may grant Dante's thesis that a common end demands a common political organization, but if so, one is left wondering exactly what role remains for the smaller communities. One answer is suggested in a later chapter, where the emperor appears as setting the major premises of legislation, which are developed by particular princes into the laws most appropriate to local conditions and local interests; by this time we are far away both from Aristotle and from the medieval scene. Dante's empire has been called a federation, but at this point it looks like a unitary empire with a flexible and decentralized administrative system—perhaps the Roman empire of the past. Elsewhere, the emperor appears as a sort of supranational judge doing justice among the kings of separate nations; this is an essential part of his concept of the emperor as peace-maker; it suggests the familiar feudal pattern of the lord who holds court for his vassals.

What is most significant, perhaps, in the first book of the *De Monarchia* is Dante's new conception of the purpose of the empire. By relating something very like the *Pax Romana* to the noble Aristotelian concept of the self-fulfilment of rational man, he did specifically for the empire what Aquinas had done for the smaller state: he gave it a positive ethical goal, set clearly in this world. The emperor of book I of the *De Monarchia* is not an officer within the church wielding a protecting sword against heretics at home and infidels abroad; he is the head of the world-wide secular community, who guides it to the realization of its common values.

In the second book, Dante turned to an analysis of the history of the Roman empire in the attempt to show that its rise to the position of supreme power in the world was manifestly sponsored by the divine will. The nobility of the Roman character, the miraculous successes which attended the early history of the empire, and the final seal of

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legitimacy stamped upon it by the fact that the Son of God accepted it as His judge were all used to demonstrate that the power wielded by the ancient empire was rightfully its own. In the third book, Dante went on to show that the medieval empire, continuous with the Roman empire of the past, likewise derived directly from God without papal intervention. The divinely-granted power of the papacy was a power in spirituals, not in temporals; the Donation of Constantine was invalid, since Constantine, as the glossators had shown, had no legal right to alienate the empire; thus the papal transfer of the empire to Charlemagne could never have occurred. All this was, of course, familiar ground, already worked by theologians and imperialist lawyers. The emperor of book 3, divinely established, curbing the sinful impulses of men, and, although independent, paying a filial reverence to the apostolic see, in some ways resembles the Christian emperor of the old theological tradition; but, as Dante drew near to his conclusion, he returned again to his own special theme of the emperor who 'guides mankind to their temporal felicity,' aiming 'particularly at this mark, that mortals in their little space may freely live with peace.'

In some ways the defence of the empire written by Engelbert of Admont was more subtle than the *De Monarchia*. Engelbert was conscious of current doubts about the original justice and present utility of the empire; of the technical debate as to whether the empire could be legally dissolved; of the problem posed by the Aristotelian concept of the *polis* as the perfect community; of Augustine's preference for the state that coincided with the *patria*. The bedrock of his thought was the fervent conviction that the empire was essential to the safety of Christendom; his treatise was an effort to support that conviction in terms that would take into account the principles of Augustine and Aristotle, the technicalities of the lawyers, and the questions of practical men.

He began with a demonstration in Aristotelian terms that lordship was natural to man and with a history of the origin of kingdoms in consent. He continued with the thesis that primeval kingdoms, originally just and happy, tended to deteriorate, and that the great monarchies of the past, of which the Roman empire was the last and most comprehensive, successively followed the same pattern. These empires of the past were for Engelbert simply 'great kingdoms,' comprehending a

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variety of peoples under a single rule, but by no means as wide as the world. The idea of the rhythmic establishment, deterioration, and ultimate disintegration of empires by a sort of natural law prepares us for the possibility that even the Roman empire may in its due time come to an end.

With his seventh chapter, Engelbert abruptly turned from history to an analysis, developed in naturalistic and secular terms, of the criteria of good political organization. The felicity of a kingdom, like that of any community, was to be determined by examination of the felicity of the individual man; the truly happy kingdom was therefore one which secured to its members all that was requisite for an Aristotelian good life. These requisites were summed up as 'sufficiency, lacking nothing; tranquillity, suffering nothing; security, fearing nothing'; and were identified as the essentials of the Aristotelian concept of freedom and of the Augustinian concept of peace, the goal 'toward which all communities tend.' Tranquillity depended on justice; and justice involved both the way in which power was acquired and the way in which it was used; the Roman empire, on examination, passed both tests.

Engelbert came then to the question whether such felicity could more readily be attained in large or small kingdoms. This was, of course, the crucial question for anyone who tried to make a transition from Aristotelian to imperial thought. As we have seen, it was a question which Dante handled only in formal terms, seeing in an approach to the unity of universality a self-evident virtue. Engelbert attempted a closer analysis. The small kingdom, he said, might be just and therefore internally tranquil, but it was necessarily lacking in sufficiency and, unless through the indulgence of its neighbours, in security. The large kingdom provided sufficiency and security; it might or might not provide justice. The great kingdom which was also just had all the conditions of felicity, and justice was easier for a great kingdom, secure and self-sufficient, than for a small one, troubled with poverty and fear. On the other hand, the injustice of the great kingdom would be worse than the injustice of the small kingdom; and, if one must choose between relative felicities, the quiet little kingdom would be preferable to the great kingdom in which tranquillity was wanting. In short, the large kingdom offered no certain felicity, though at its best it could provide more completely for human needs than could the small state. In

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contrast to Dante, Engelbert showed a cautious relativism that might be partly due to his respect for Augustine, and perhaps partly also to the fact that for him the great monarchy was an experience and not a prayer.

So far we have dealt only with great kingdoms—empires including a variety of peoples, but not necessarily coextensive with the world. When we reach the chapters in which Engelbert finally set forth the arguments for and against imperial organization, we find him describing an empire that resembles Dante's—the philosopher's empire, based on the ultimate unity of human nature and its purposes, comprehending all mankind as a single people consenting to a common law, carrying to its perfect logical conclusion the principle of order attained through hierarchical subordination. But so far as his empire was the philosopher's empire, Engelbert was far less certain than Dante of its necessary virtue. The chapter in which he marshalled the arguments against imperial organization betrays his sensitivity to doubts arising from contemporary observation as well as those suggested by his classic sources. Independent kingdoms could after all be peaceful and happy; the magnitude of a state would make it only the harder to govern; as a matter of fact, no empire past or present had achieved security and peace. There was no common law among mankind, no common religion, therefore no *populus* for the common kingdom. The Roman empire had been diminished in the past; many great kingdoms were in his own time exempt from its jurisdiction; there was, then, no intrinsic reason why it might not, for good cause, be legally abolished.

These arguments Engelbert refuted; but his refutation involved fresh transmutations of his concept of empire. It was no longer the perfect community, but an imperfect community striving toward perfection, conditioned by the imperfections of this world; its felicity would consist not in attaining peace but in attempting it. And it appeared more and more clearly as the Christian empire, whose one really vital function was to unite the temporal force of Christendom for the defence and promotion of the faith. Its authority *could* be world-wide, inasmuch as the law of nature and the law of peoples were law to which all the world consented; but the jurisdiction which Engelbert based upon that law was in effect simply an occasional coercion: the emperor would enforce natural law by protecting the rights of Christendom against infidel aggression. From the authority of such an



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empire no Christian kingdom could be legally exempt, whatever 'privileges' of self-government they might have acquired or however successfully they might demonstrate their ability to maintain harmonious relations with one another. For the empire that really mattered to Engelbert had nothing to do with the ordinary government of the kingdoms subjected to it; and if they could attain a secular 'sufficiency, security, and tranquillity' without its aid, he did not really care. But all Christian kingdoms must acknowledge the authority of the crusading empire when the interests of the church and the faith were threatened by unbelief. Therefore the falling away of kingdoms from the empire would be the prelude to the coming of Antichrist.

Dante's defence of the empire was set in an intellectual context of which Engelbert seems to have been unaware. While papal policy in practice hesitated among alternative solutions for the imperial question, leading canonists and some theologians had been developing the principles of Innocent IV into a closely-woven system which appeared to demonstrate that the fate of the empire was at all events a matter for papal disposition. The ultimate basis of the system was the doctrine that all temporal power had been given by Christ to Peter and was exercised by secular rulers as a delegation from a continuing papal authority. The pope retained the right to direct and control the use of temporal power; to create and transfer kingdoms; to judge and depose rulers, not only for heresy and sacrilege but for any great crime; to provide for the administration of kingdoms whose rulers were incapable of ruling. These principles applied to the relation of the pope with all temporal rulers. The case of the empire was more specific but not essentially different. The Donation of Constantine was not a cession but a recognition of an already existing authority, and that authority continued in papal hands undiminished by the transfer of empire from the Greeks to the Germans or by the establishment, by the papacy, of the electoral system. Whenever the empire was vacant, imperial authority was vested directly in the pope; it was conferred on a new emperor not by election but by the papal confirmation and coronation of the candidate proposed by the electors; while the pope did not normally interfere in 'what has been properly done by the emperor in temporals,' he retained a casual right of intervention in special cases and an overall right to direct, censure, and if necessary to depose the emperor. In short, the jurisdictions of pope and emperor were distinct only 'in regard

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to execution'; in Hostiensis's significant phrase the emperor could be called 'an official or vicar of the Roman church.'<sup>22</sup>

At about the same time as the later chapters of the *De Prerogativa* were written, the Italian theologian Tholommeo of Lucca wrote a treatise on the imperial jurisdiction which set forth comprehensively a theory in general like that of the canonists, but including several points which have their own interest. He traced the empires of ancient history in the usual way: the lordship of the world had passed successively to the Assyrians, then under Darius to the Medes and Persians, then to the Greeks and Egyptians under Alexander the Great, and finally to the Romans. Transfer of empire from time to time was thus a normal phenomenon; 'in this world there is found no perpetual dominion.' The right of the Romans rested on the 'permission and provision of God,' at first, in the period of the republic, because of their own virtues; thereafter, 'because of the wickedness of the peoples.' But empire was destined ultimately to pass from the Romans also: 'it returned to the true lord who had granted it, namely, to Christ, whose vicar is the supreme pontiff.' Thus the Roman church became the fifth of the great world-monarchies. From the time of Peter, the popes had a *de jure* right to the empire; but, since it was Christ's will that He and His church should first demonstrate to the world their humility and spiritual purposes, the Roman emperors were permitted to continue to rule as unwitting agents of the true lord. With the conversion of Constantine, the time was ripe for a 'cession' of the powers exercised by the emperor to the pope, to whom they had long rightfully belonged. Thereafter the emperors were obedient to the papacy until the Lombard invasion, when the papacy transferred the empire to Charlemagne; it remained hereditary until Gregory V established the electoral system, which 'will endure so long as the Roman church, which holds the supreme place in the principate, judges it expedient to the faithful of Christ.' The papal right to depose emperors and transfer the empire was based on the fact that 'the supreme pontiff uses the office of emperor as an instrument for the defence of himself and of the church.'<sup>23</sup>

So far we have a theory essentially like that of the principal canonists, though given an historical context which emphasized the nature of the empire as a world-monarchy. We also find in Tholommeo's treatise, however, a suggestion of a principle which was not included

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in extreme curialist thought, though up to the time of John XXII it was not explicitly challenged by curialist policy: a distinction between the rights of an elected candidate in Germany and his wider potential rights as emperor:

“The full authority of the pope is manifest, and from this it also clearly appears that the imperial jurisdiction has no force without its authority and assent, and it . . . is also manifest that the emperor has no vested right of administration through his election alone, unless something else follows it, unless perhaps in the Kingdom of Germany, in which the election itself confers right, whether from long custom . . . or perhaps from the right of the princes of the said province to ordain to whom they will submit themselves in regard to their own affairs, whereas they have no such right in regard to other parts of the empire. . . .’<sup>24</sup>

The protagonists of the general theory that we have sketched did not usually couple their insistence on the universality of the papal monarchy with any assumption that the delegated authority of the emperors should also be as wide as the world.<sup>25</sup> As early as 1208, the English canonist Alanus had said that every king had as much right in his kingdom as the emperor in his empire. Thirteenth-century canonists, glossing Innocent III’s statement that the king of France recognized no temporal superior, were divided. One group claimed that Innocent’s statement was true *de facto*, but not *de jure*—a distinction which was happily echoed by imperialist lawyers. Hostiensis said specifically, ‘The emperor is lord of the world, and all nations are under him.’ In contrast, Innocent IV implied at times that the empire was simply one among the many kingships ultimately deriving their power from the Roman see, though the empire was bound to it by more intimate relations. His comment on the clause in *Per venerabilem* was: ‘This is true *de facto*, for *de jure*, as some say, he is subject to the Roman emperor; but we, on the other hand, say that he is subject to the pope.’ Other canonists stressed the independence of the king of France. However attractive a formal lordship of the emperor over other princes might be to an orderly legal mind, those who believed that the pope was the unifying head of temporal as well as spiritual matters did not need a universal empire as a principle of unity; and the political interests

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of the papal curia, under the conditions of most of the thirteenth century, gave no practical reason for supporting it. But the general brevity of canonists' comment on this topic is even more significant than their disagreement: the universality of the medieval empire was not a thirteenth-century issue.

The turn of the century saw a diplomatic revolution, when the kingdom of France, which the papacy had typically regarded as its most valuable counterweight against a difficult empire, moved into the position of chief and most dangerous opponent of the papal will. Philip IV's successful assertion of his right to levy taxes on the French clergy and his insistence on trying a French bishop in a French court marked the new and radical self-confidence of a national state now organized to a point at which it could not tolerate a system of ecclesiastical immunities within its borders. The Estates General of 1302 gave Philip the broad national support which German emperors had never been able to win from the German people. Boniface VIII countered with *Unam Sanctam*, whose resounding terms suggested but did not specifically assert the new curialist doctrine of the derivation of all temporal power from the papacy and the supreme rights of the pope as judge of all temporal rulers. He also attempted to use the empire as a practical and theoretical weapon against France.

He had in 1301 refused to recognize the claims of Albert I, elected candidate for the imperial dignity, but in 1305, in return for Albert's recognition that the empire and the electoral system rested on a papal grant, he agreed to confirm the election and also rewarded Albert with a grant of spoils to be taken from Philip the Fair. His speech to Albert's envoys on that occasion was obviously directed against France and signalized officially a new departure in the papal theory of the empire. He reminded the Germans, indeed, that as the empire, whose purpose was the defence of the church, had been transferred to them by the vicar of Christ, so it could without injustice be transferred elsewhere if he wished. He expressed his hopes that Albert would be, like his father Rudolf, 'faithful and devoted to the church.' With these hopes he invested him with power 'over kings and kingdoms' (a scriptural phrase usually reserved for popes) and spoke of him as 'to be promoted to be emperor and monarch of all kingdoms and princes of the earth.' 'Let not that Gallic pride,' he continued, 'which says it recognizes no superior, rebel against this. They lie, for by right they are and ought to



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be under the Roman King and Emperor.' He concluded by promising full support to Albert, 'if he should defend and recover his rights and the rights of his Kingdom and Empire.'<sup>26</sup>

The new papal policy was more significant for theory than in practical result. Albert was too weak to be of any use, and the same year saw the episode of Anagni and the unhappy death of Boniface. But Boniface's speech had given dramatic expression to a principle already expounded and already resented by Gallic pride. An anonymous treatise on *Clericis laicos*,<sup>27</sup> perhaps by the important canonist Henry of Cremona, had already pointed to French subjection to the empire as evidence of the temporal subjection of France to the pope. 'All kings and princes acknowledge that they are subject in corporal matters to the Roman emperor. And everyone attributes to him this right of superiority in temporals *de jure*, since he is called lord of the earth. . . . And then they could not deny that they are subject mediately to the pope in temporals, since the empire is held from him.' With such arguments in the air, the question of the universality of the empire became a live issue for France, and French theologians joined French civilists in active examination of the need for a single temporal sovereignty and of the legal relationships between the empire, the French kingdom, and the papacy.

We have said that the French consciousness of independence was deeply rooted; and in the course of the thirteenth century it had been frequently expressed.<sup>28</sup> 'The king has no sovereign in temporal things, nor does he hold from anyone but from God and himself, nor is there any appeal from his judgment save to God,' said the compiler of the *Établissements de St. Louis*. French kings had applied imperial epithets to themselves: '*semper augustus*' or '*gloriosus*'; French lawyers had applied to the king such texts as *Quod principi placuit*. While a minority of French civilists joined imperialist lawyers in describing the emperor as 'lord of the world' and pointing out that French independence was merely *de facto*, the great majority asserted the independence of the king of France and his supremacy or even 'majesty' in his realm; some defined their opinion in the phrase: 'The king is prince in his kingdom.' The lawyers' assertions were not supported by argument; but by the time of Philip the Fair, the notion of a parallel between king and emperor was moving in men's minds.

The French consciousness of national dignity had doubtless been

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partly responsible for Philip III's proposal that his brother be elected emperor; Philip the Fair was later to suggest that the empire be transferred to the king of France. The ingenious schemes of the civilist Pierre Dubois reflect the same strain of national ambition carried to an extreme. In a treatise<sup>29</sup> little noticed in his own day, but significant as revealing one school of thought at the French court, he proposed that the king of France become emperor of the West, his brother the emperor of the East; the empire should become hereditary. The wealth of the church should be confiscated, part of it to provide salaries for the clergy, the rest to finance a super-crusade under the leadership of the king of France. The royal courts should become supreme over the ecclesiastical, dealing even with cases of heresy. The cardinalate should be packed so as to assure a succession of French popes; the Papal States should pass to the king of France; the pope, stripped of all temporal power and supported by a pension from the French treasury, should devote himself to his spiritual ministry, in particular calling and presiding over a council to initiate a thoroughgoing reform of the church.

The typical French attitude of the period, however, was more conservative in its basic principles, though freshly vigorous in their expression. It is well represented in such anonymous treatises as the hard-hitting *Disputatio inter Clericum et Militem* (1296-1302), probably written by a layman in defence of the French defiance of *Clericis laicos*; the *Quaestio de Utraque Potestate* (1302), a theologian's analysis of church-state relationships; and in the closely-argued *Rex Pacificus* (1302), which indicates a knowledge of law and of theology. With these we may put the very comprehensive analysis by John of Paris, *De Potestate Regia et Papali* (1302). These pamphleteers stoutly asserted French independence of the empire but made common cause with the imperialists in denying that the papacy was the source of temporal power. We are not here concerned with the arguments by which they repudiated the general papal claims to temporal lordship: they involved a restatement of the old Gelasian theory of the mutual independence of *regnum* and *sacerdotium*, with detailed refutation of the philosophical and theological arguments currently used by the papal partisans. The specific papalist claim that France was subject to the papacy by way of its *de jure* subjection to the empire was met by two sets of arguments: by a legal analysis of historical materials aiming to refute the legal

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subordination of the empire to the papacy, and, even more, of France to the empire, and by a philosophical analysis aiming to demonstrate that a universal secular empire was not necessary to the good order of the world.

The legal-historical approach began with an attack on the Donation of Constantine. It was claimed that the Donation was obviously not a cession of the whole empire, since Constantine had kept the eastern empire for himself. If it was to be interpreted as applying to the western empire, 'the jurists commonly say it was invalid for many reasons': briefly, because the emperor had no authority to alienate the empire to the prejudice of his successors. If valid, then, the Donation could apply only to the Patrimony of St. Peter; but, even if it covered the whole western empire, it still could not have included France, since the Franks were never subject to the empire. Finally, even if one granted that the Donation was a valid deed applying to the whole Roman empire including France, such an admission would still not imply a present *de jure* lordship of the papacy over the kingdom of France *via* the empire, for such a lordship would have been nullified long since by the prescriptive right acquired by the French kings, who in good faith had held their kingdom independently for far longer than the hundred years legally requisite for prescription against the Roman empire.<sup>30</sup> Or, as an alternative theory had it, the kingdom of France had been split off from the Carolingian empire by a 'fraternal division' in the Treaty of Verdun.<sup>31</sup> In short, the French claim to independence of the empire was secured by a whole system of defences in depth, whose effect was to make it emphatically clear that, although there might be debate as to when independence began, there was to be no doubt that France was now absolutely independent, both *de facto* and *de jure*. The relation of kingdom and empire was that of two parallel and coordinate authorities. The king of France was 'equal to the emperor in regard to the liberty of his jurisdiction,' said the *Quaestio de Utraque Potestate*. 'Whatever privilege and dignity the name of empire implies in one part, the kingdom of France has in the other,' said the *Dialogus inter Clericum et Militem*.

The philosophical answer to the papalist attempt to foist an imperial overlordship on France was made by John of Paris. His brief arguments provide an interesting contrast to those of Dante. He was an Aristotelian and student of Aquinas; for him, as for Dante, the life of the reason

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was the natural end of man; he had no more doubt than any other Christian of the period that the common spiritual destiny of men needed the guidance and control of a world-wide spiritual authority; but he refused to draw an analogy from the spiritual to the secular life. The good life for the secular man needed no final arbiter of truth; there were many paths to the common end, varying with human diversity and with the diversity of the conditions under which men lived. And, as a matter of fact, 'one man alone is not enough to govern the whole world in temporal matters.' The sword that brings peace must be held by a hand not too remote.

John of Paris repudiated the idea of a world empire as a philosophic necessity. He denied the lordship of the medieval Roman empire over the kingdom of France. Yet it is significant that he still kept a special place in his thought for what we have called the Christian empire. Even as the pope, by excommunicating those who obeyed him, could bring about the deposition of an heretical emperor, so, he contended, it was possible for the emperor, by physical penalties applied to 'each and every one,' to prevent men from obeying an heretical pope. For 'both pope and emperor have universal jurisdiction everywhere, but the one is spiritual, the other temporal.' Elsewhere he spoke of the emperor, 'if he were a monarch,' as 'head of the world' in 'the government and disposition of temporals' as 'each king is head of his kingdom'<sup>32</sup>; one does not know whether to call this a careless inconsistency in his thought, or to suggest that it arose from a conviction that the emperor still retained a latent universality of temporal power, implying no regular jurisdiction over each king in his kingdom but a formal presidency which would become an effective right to action when the safety of Christendom was at stake.

Within a few years, the crisis which had produced a novel alliance between universal papacy and universal empire was resolved in the complex series of events which culminated in the significant transfer of the papal court to Avignon; and, almost immediately, it was confronted with a case in which the lordship of an emperor over a king was the precise point at issue.<sup>33</sup> In the spring of 1312, the inept and ill-fated Henry VII—the monarch of Dante's dream—passed a law which solemnly reaffirmed the imperial claim to universal lordship; in the fall, he summoned Robert of Naples to appear before the imperial court on a charge of *lèse-majesté*. But, since 1275 at least, Sicilian lawyers



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had been developing, with greater force and more detailed argument than their French contemporaries, the thesis of the full equality of king and emperor. Whereas French lawyers had been content to assert the independence of France, the Sicilians had raised the question whether Roman emperors had ever attained rightful sovereignty over lands admittedly subjugated by conquest, had made common cause with all free kings who had never admitted subjection to the empire or had achieved exemption by long-term prescriptive right, had asserted that every king was emperor in his kingdom, and had drawn the clear conclusion that the emperor was only a king in his.<sup>34</sup> Supported by this vigorous theory, Robert ignored Henry's summons on the ground that he was an independent sovereign and could not be tried by his equal; Henry's court thereupon found him guilty of high treason and sentenced him to confiscation of goods and deprivation of all dignities. The Neapolitan kingdom was a papal fief. Thus Henry's claims against Robert were in direct opposition to papal claims and interests. And thus, ironically enough, Clement V was driven to an explicit reversal of the thesis which his predecessor had proclaimed less than a decade before. In the bull *Pastoralis cura* which declared the imperial sentence invalid, he not only asserted that he himself was 'the ordinary judge of the king,' but also that the emperor had 'no reason on earth' to claim jurisdiction over Robert of Naples: he had no jurisdiction 'outside the district of the empire.'

Clement's bull was based on a draft prepared by the jurist Oldradus da Ponte. Oldradus later generalized his opinion in a treatise which clearly raised the fundamental question: 'whether all kings ought by right to be subject to the emperor.' He answered this question with an emphatic reassertion of the French and Sicilian arguments, basically denying the legitimacy of imperial claims to universal overlordship and substituting the concept of a world of sovereign states, in which each king was emperor in his own realm. Oldradus's thesis was vigorously opposed by civilists who still defended the original legitimacy and the *de jure* indestructibility of the Roman empire. But the formula '*rex est imperator in regno suo*' was widely accepted in the fourteenth century. It provided, for the European kingdoms, an axiom from which all the implications of *de facto* sovereignty could be deduced, even while it might be conceived to leave still open the comparatively unimportant question of the emperor's *de jure* overlordship.<sup>35</sup>

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In the next generation Bartolus developed a similar formula for the free Italian cities.<sup>36</sup> While asserting that the emperor was still *de jure* lord of the world, he accepted the blunt fact that many of the Italian cities did not recognize the emperor as their superior and were actually exercising the fiscal, juridical, and legislative powers which Roman law appropriated to the emperor alone. A state with these *de facto* characteristics, he declared, 'has as much authority in regard to its own people as the emperor has in regard to the whole.' Thus, while it still remained a part of the Roman empire—a part of that great community whose law was Roman law—in that community it was '*sibi princeps*'—'a prince for itself.' Bartolus's solution in effect distinguished between the empire and the emperor. His concept made it possible to combine a complete independence of imperial government with the reception of Roman law, both as the common internal law of many separate states and as the law which regulated their relations with one another.

Meanwhile—and without much attention from Bartolus or other civilists—the last great sequence in the drama of papacy versus empire was being played out. From Avignon, in comfortable harmony with French policy, the papacy continued its recurrent attempts to enforce control over the empire; but these attempts were met by a growing German resistance—a resistance which, like the French resistance to Boniface VIII, was based on a growing sense of national identity and national self-determination. The Christian empire, the Roman empire, and the philosopher's empire were still discussed; but the focus of the new loyalty was the German empire.

The explicit controversy developed in a struggle between John XXII and his successors and Lewis of Bavaria. It began with a disagreement over the technical question, what powers could legitimately be exercised by an elected candidate who had not been crowned emperor by the pope. In 1323, John attempted to force from Lewis a recognition that not only the exercise of the imperial rights in Italy but even—a new claim—the exercise of the rights of the German kingship was transferred only through the coronation; that these rights could not be exercised by an elected candidate until they should have been thus granted. Lewis, on the other hand, claimed that the elected candidate entered immediately into both the rights of the German kingship and the imperial rights; he argued that the pope had still to confer only the formal title of emperor, and could refuse this only for cause. It is note-

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worthy that Lewis wanted to be emperor as well as German king: the Italian claims were still valuable; the king of France was always a possible contender for the imperial dignity; and Lewis, whose election had not been unanimous, needed the title to strengthen his position in Germany. So long as the majority vote of electors was not yet recognized as decisive, a German ruler had no choice but to be an imperialist. Thus both John and Lewis appointed subordinates to exercise the Italian rights of the empire, and John threatened Lewis with excommunication and his subjects with excommunication and interdict if Lewis should persist in his attempts to exercise a usurped power in Germany and Italy.

Fortunately for Lewis, John's reversal of his predecessor on the issue of apostolic poverty provided a basis for a counterattack, and the rise of the Romans in 1327 against the papal governor provided an opportunity. Lewis's expedition to Rome to secure his own coronation, the deposition of John as a heretic by a Roman parliament, and the election of an antipope by the Roman people were, on the whole, in a familiar medieval tradition: the Christian emperor was using his secular power to protect Christendom from an heretical pope. But the emphasis on the joint action of the emperor and the *populus Romanus* perhaps reflected the influence of more recent thought.

Marsiglio, who had put himself under Lewis's protection in 1326, accompanied Lewis on the expedition as one of his most influential counsellors. In his *Defensor Pacis*, Marsiglio's position on the question of the empire had been far from clear or consistent. No more than any other Aristotelian was he able to move easily from *polis* to empire. In *dictio* 1 he had visualized a world of separate states, and had included a brief suggestion that the unity of the world under a single secular ruler was not necessary or desirable.<sup>37</sup> But when, in *dictio* 2, he turned to the problem of the church, the development of his thought required a secular organization coextensive with Christendom. The separate established churches implied in *dictio* 1 were not really adequate for Marsiglio, who was thoroughly medieval in his sense of the unity of Christianity and in his conviction that the reform of the church was a common and urgent problem for all Christendom. He needed a general council as the agent of reform, and logically he also needed a universal legislator or *pars principans* to set up the council and to give universal force to its recommendations. But such a universal secular organization

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did not follow from the premises of his secular system. Accordingly he took refuge in vagueness. The 'faithful human legislator with no superior or the person or persons to whom it has conveyed its authority' had the power of convening, choosing delegates for, and enforcing the decisions of the general council; under the existing organization of Europe, the only person who could conceivably be regarded as acting with the authority of a 'universal legislator' would be the emperor, and certain passages seem to assume this identification. In some passages Marsiglio referred to the '*legislator primus*,' '*supremus*,' or '*universalis*'; but elsewhere he reasserted the position taken in *dictio* 1, that unity of coercive government was necessary only for each particular 'province,' not for the entire world: 'even though there seems to be more need for this among the faithful than there is need for one universal bishop, since a universal prince,' having coercive authority, 'is more capable of preserving the faithful in unity than a universal bishop would be.'<sup>38</sup>

The *Defensor Pacis* was completed before Marsiglio committed his personal fortunes to the protection of Lewis of Bavaria; the *Defensor Minor*, written in 1341, contains a more definite attempt to fit the empire into the system. The original Roman empire, Marsiglio argued, derived its powers from the consent of the *valentiores partes* of the regions it incorporated in itself; by this consent, the *populus Romanus* became a universal legislator for the empire, and its duly elected emperor was properly the *pars principans* of the whole.

' . . . Let us say that the supreme human legislator, especially from the time of Christ to the present time, and perhaps for some time before, was and is and ought to be the *universitas* of men who ought to be under the coercive commands of law, or its *valentior pars*, in single regions or provinces. And because through the *universitas* of provinces or their *valentior pars* this power or authority was transferred to the Roman people on account of its exceeding virtue, the Roman people had and has the authority of making laws over all the provinces of the world; and if this people transferred the authority of making laws to its prince, it should likewise be said that their prince has this power; and their authority, namely, that of the Roman people and its prince, ought to endure and rationally will endure, until it has been revoked from them by the *universitas* of provinces or by the Roman people from its prince. And we claim that such powers are or will be



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duly revoked when the *universitas* of provinces, through itself or through its delegates, or the Roman people, or their more weighty part, shall have been duly congregated and shall have made such deliberation concerning revocation. . . .'<sup>39</sup>

Thus for Marsiglio, as for Dante, the universal empire was a Roman empire; but it was an empire of whose philosophic necessity he was scarcely convinced, whose universality interested him only as he could hope to use it as a weapon of ecclesiastical reform, whose relation to the separate states which he really preferred remained indefinite, and whose authority, whatever that authority might be, had been established and was potentially terminable by popular consent.

Lewis's Italian expedition ended in failure. The succeeding years were marked by continual negotiations between Lewis and the papacy, with offers of more or less complete submission on Lewis's part. But John XXII and after him Benedict XII maintained an uncompromising position. Their obstinacy finally had the effect of consolidating German support behind Lewis. In 1338, all but one of the electoral princes joined in the clear-cut Declaration of Rense,<sup>40</sup> affirming that ' . . . by right and by the ancient proven custom of the empire, when someone has been elected king of the Romans by the electors of the empire, or, in case of dispute, by a numerical majority of the same princes, he does not need the nomination, approval, confirmation, assent, or authority of the apostolic see in order to assume the administration of the goods and rights of the empire or the royal title, and that he who has been elected need not apply to the apostolic see for those things. . . .' This declaration was supported by the imperial cities; it was followed by Lewis's famous proclamation to the Diet at Frankfurt, '*Licet Juris*,'<sup>41</sup> which asserted emphatically that the imperial power was immediately from God and that the legally elected German ruler needed no approval by the pope but became without further ado both king and emperor. In making the imperial title also independent of papal grant, '*Licet Juris*' went even further than the Declaration of Rense. A second declaration denied papal authority in temporals and refused to recognize, as *extra vires*, the validity of the papal judgment on Lewis. It asserted the proper subjection of the pope to a general council.

In these declarations one finds no echo of Marsiglio's characteristic doctrines. The Declaration of Rense expresses a German consciousness

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of national independence; the Frankfurt declarations combine with this the influence of the Spiritual Franciscans, to whom Lewis had given a precarious protection since 1328, and whose polemics against papal absolutism in church and state he had alternately encouraged and disavowed.

For a systematic statement of a moderate nationalist position on the empire, we may examine the arguments of Lupold of Bebenburg, who has been called 'the first systematizer of German constitutional law.'<sup>42</sup> Lupold was one of the many German ecclesiastics who shifted to the support of Lewis in 1338 in reaction against the extreme papal claims. His *Tractatus de Juribus Regni et Imperii Romani* was completed in 1340 and dedicated to the Archbishop of Trier, one of the electors who signed the Declaration of Rense. It was written, Lupold tells us, because of his 'fervent zeal for Germany his fatherland.'<sup>43</sup> The empire that concerned Lupold was neither what we have called the Christian empire nor the empire that was the heir of ancient Rome, with their implications of universality, although his theory took account of both these concepts. Still less was it the abstract universal empire of philosophical speculation; it was, in fact, the actual medieval empire, conceived as a secular state, as a specific corporate body with its own internal law, exercising specific kinds of jurisdiction over specific territories, and deriving its power ultimately from its own historical development and from the corporate consent of its own people.

Lupold's theory began with the Carolingian empire, a matter of historical fact. That empire, covering Gaul, Germany, and Italy, was, he argued, held by the Frank (German) Charlemagne simply by virtue of hereditary succession and legitimate conquest. For that holding Charlemagne owed no allegiance to pope or eastern emperor: the pope had never had, the eastern emperor had long since lost the temporal lordship of those territories. Thus the *translatio imperii*, which Lupold assumed to have occurred at the famous Christmas coronation in the year 800, did not in any way modify or strengthen Charlemagne's title to what he already had. It merely added two new things: the special role of defender of the church to which the Greek emperor had proved inadequate and, with that, the imperial claims to lordship over that remaining world which was not already his. This transfer, according to Lupold, was not an exercise of any normal papal control over the fate of empires. While he refused to choose among the variety of

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available opinions on the Donation of Constantine,<sup>44</sup> he obviously gave it no weight against his fundamental conviction that, normally, the spiritual and temporal powers were 'distinct and divided,'<sup>45</sup> and that the power of the pope was only spiritual. Thus the transfer of the empire was an instance of the casual jurisdiction of the papacy, 'on account of the necessity of the situation'<sup>46</sup>; it was made once for all on Christmas Day in 800; it left no residual overlordship in papal hands.

To be consistent, Lupold should probably have gone on to argue, as did the most extreme of contemporary imperialists, including Occam, that since the *translatio* at the Christmas coronation had already conveyed the imperial rights which Charlemagne had still lacked, succeeding coronations could add nothing but an empty title. He did not take this position in the 1340 edition of his treatise, though in a later revision he accepted it as a possible alternative. In 1340, he asserted that, while the imperial title and the residual imperial rights were conveyed to the candidate by and through each particular coronation, they did not pass to him *by virtue of* that coronation, but by virtue of the original transfer to Charlemagne. Thus, while the coronation kept a real significance in Lupold's theory, the papal role was decisively reduced to an instrumental and formal role which did not imply any papal lordship over the imperial rights themselves. In effect, Lupold had returned by his own route to a position like that of Innocent III; and it may be added that, while he recognized a casual papal right to scrutinize candidates and to choose between rivals in a disputed election, his argument for the validity of a majority election<sup>47</sup> would remove most occasions for this kind of interference.

But what was really important to Lupold, as we have said, was not that shadowy claim to an ancient universality which the *translatio* had conferred upon the German emperors as advocates of the church. It was the right which a duly elected ruler had to govern Germany and Italy: a right which, in Lupold's system, was a complete governing authority precisely like the rights which successors to hereditary kingdoms received by succession. It could be demonstrated by 'the law of peoples, and the general custom of western kingdoms, and also by ancient histories and chronicles.'<sup>48</sup> The contemporary German emperor was the direct heir of Charlemagne and on his election entered directly into those rights which inheritance and conquest had secured

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to Charlemagne; those rights were not prejudiced by any submissions made to the pope by intervening emperors, who by the law of peoples could not diminish their authority without the consent of their princes and people; those rights were not affected by the fact that the empire had become elective, since the electoral system had been established not by the pope but by the German people and rested on the *ius gentium* principle that any people had a right to make a king for itself.

The original Carolingian empire had, of course, included France; and Lupold was well aware that in his day the kings of France acknowledged no superior. The logic of his whole approach would seem to lead to the recognition that, even as Charlemagne had legitimately won a supreme control over lands in which the emperor of the east had ceased to exercise effective rule, so the kings of France might also have established their complete independence in lands where Carolingian authority had lapsed. He was, perhaps, too much a German—or too much a lawyer—to go so far. It was not, at all events, an issue of immediate practical importance. Thus, while he saw the problem clearly and stated it frankly in legal terms, he did not try to solve it: he left open the possibility that there might still exist a *de jure* lordship of the emperor over the king.

Lupold's approach to the question of the empire may be contrasted with that of William of Occam, in whose *Octo Quaestionum Decisiones* some phases of the subject are treated with obvious awareness of Lupold's position, and whose *Dialogus* includes several treatises on phases of the imperial question.<sup>49</sup> Occam's attachment to the emperor's cause was largely a by-product of his deep devotion to the principles of the Spiritual Franciscans and his intense hatred of papal tyranny wherever exercised. He had, unlike Lupold, the broad and questioning mind of a trained philosopher. Thus Occam's writings on the imperial issues were, in part, merely dutiful pamphleteering in support of his protector; in part, an anti-papal polemic arising from strong conviction; and again, in part, an aloof but comprehensive examination of an intellectual question. And thus it is not surprising that he was indecisive or vague on points where Lupold was cogent and clear and yet radically incisive on other points where Lupold was moderate or uncertain.

The *Octo Quaestionum Decisiones* was obviously a tract for the times. In it Occam examined the current papal claims to lordship over the



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empire: the doctrine of the papal plenitude of power in seculars, the papal theory of the *translatio*, the implications of the coronation ceremony. As in all his political writings, he was most emphatic on the principle that the papal power was simply a power in spirituals involving no direct jurisdiction in temporals; he argued that, whatever the Donation of Constantine might have been, it was not a recognition of a pre-existing papal right; he lined up objections to the papal theory of the *translatio*; and, clearly in opposition to the position represented by Lupold, he denied that there was any distinction between the empire and the kingship or any political significance in the coronation ceremony. On the whole, his discussion supported the extreme position maintained by Lewis at Frankfurt.

For a general analysis of the basis and scope of the empire, we must turn to the *Dialogus*, several sections of which are most illuminating as summaries of contemporary thought on the problem and as indications of Occam's own convictions, so far as he had formulated them. In the *Dialogus* we find again refutations of the papal claim to temporal lordship and of the papal theories of the Donation of Constantine and the *translatio*. The empire appears as an independent institution coordinate with the church, deriving its authority ultimately from God but through the consent of 'the whole community of mortals.' The emperor is still the prince on whom preeminently rests the responsibility of casual intervention in the church when the institutions of the church fail to secure the spiritual ends for which the church exists. But the empire also appears as a secular institution whose justification lies in its success in furthering the common good of mortal men on earth. And it appears as the universal empire of the civilists and the philosophers rather than as the German empire of the statesman Lupold.

Occam recognized the general force of the philosophic arguments for the ordering of multiplicity through the unity of centralized control; but this recognition was balanced by his characteristic insistence that an institution must be evaluated in terms of its usefulness in an actual context. More sharply and comprehensively than any of his predecessors, he demonstrated that a formal and legal unity through universal empire would not necessarily achieve—might even militate against—a real unification of mankind. The philosophic arguments for unification, he pointed out, would be valid only in so far as their assumption of an effective exertion of authority on the one hand, an

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effective acceptance of authority on the other, could be based on fact. The legal validity of imperial rule was, then, based not on the absolute principles of natural law but on the law of peoples, whose prescriptions, Occam thought,<sup>50</sup> varied with changing circumstances and with the resulting ebb and flow of human consent. Occam's theory of the relation of authority and consent did not, like Marsiglio's, assume a formal grant or withdrawal of power by an organized constituency. The *de facto* independence of kingdoms once part of the empire might in itself be evidence of changes which for the time destroyed the real basis of imperial right; thus Occam's theory provided a bridge for the transition from *de facto* to *de jure* independence and a solution of the old legal problem of how the rights of the empire could possibly be abrogated. When he turned, however, to the question whether this was indeed the situation of his own day, he gave no decisive answer. He was obviously ill at ease in the argument, but on the whole his discussion seems to lead to the conclusion that the emperor still remained lord of the whole world. Was this one more instance of the difficulty that so many medieval writers experienced in bluntly facing the fact that the Roman world no longer existed? Was it merely a necessary gesture of deference to his patron and protector? Or was it a reflection of his own desire to keep as much as possible of prestige for an emperor whom he hoped to see the champion of true Christianity against an heretical and tyrannical pope?

The dispute between emperor and pope dragged on through Lewis's lifetime; once again the ebbing of German support brought Lewis to the point of abject submission; once again papal obstinacy over-reached itself and stimulated a new German resistance. Nothing had been formally settled when Charles of Bohemia succeeded Lewis as emperor in 1347, with papal support. Charles accepted before his election all the old demands of the curia; but this was only a paper triumph for the papacy. The tragi-comic struggle between Lewis of Bavaria and the papacy had in fact resulted in a stalemate: whatever statements an imperial candidate might subscribe to, the empire remained German. The succeeding period was one of comparative calm. Its outstanding theorist, Conrad of Megenburg, combined a cool and well-reasoned defence of a moderate curialist interpretation of the dependence of the empire on the papacy with a fervent German patriotism and a clear-cut hostility to French influence.<sup>51</sup> The really crucial practical question,

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the procedure of electing an emperor, was settled in 1356 by the Golden Bull,<sup>52</sup> with no allusion to the papal claims to scrutiny and confirmation and in terms that allowed almost no opportunity for papal interference. The Golden Bull did not become a controversial issue.

The empire which was thus effectively made secure from papal control and, more important, from French control was, of course, the new, consciously German empire rather than the empire which had once been decked in claims to universal sway. But through the medieval period, and beyond, those claims still echoed. Dante's philosophical defence of universal monarchy was repeated in the conciliarist treatise of Antonius Rosellinus.<sup>53</sup> The legal arguments for the indestructibility of the Roman empire were summarized in the elegant essay of Aeneas Sylvius.<sup>54</sup> Even in the seventeenth century, lawyers still fought the shadowy battle of the emperor's *de jure* rights.

But the growth of the doctrine that all legitimate authority must be traced to the consent of its subjects steadily undermined such claims by making *de jure* authority itself contingent on the factual situation. Tendencies which, in varied forms, we have already noticed in the thought of the French pamphleteers, of Marsiglio, of Lupold, of Occam, reached a sharp statement in the *De Concordantia Catholica* of Nicholas of Cusa. After remarking that even the original Roman empire was not world-wide, and pointing out the *de facto* shrinkage of the later empire in comparison with the Roman sway, he disposed of the *de jure* problem in a succinct alternative: 'Now we see what has become of that admirable empire. Therefore we may fittingly say that, if the Romans possessed monarchy, in the way described, by right, then the emperor to whom that power has been transferred is by right lord of the earth. If, however, empire is rightfully possessed only from the elective concord of the subjects, as we have said, then he is not lord except by act of the subjects and we must understand that the emperor is lord only of that world which he commands.'<sup>55</sup> The concept of world empire, according to Cusa, had continued validity only as it implied the particular responsibility of the emperor to promote the general welfare of Christendom, especially in matters of faith.

Most persistent of all the medieval imperial ideas was the concept of the emperor as the special protector of the church and the leader of a united Christendom. To this tradition the conciliarists appealed when

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they looked to the emperor to summon the universal council that would heal the Schism and inaugurate a programme of ecclesiastical reform. And even after the Protestant Reformation had split the unity of Christendom beyond repair, this same tradition inspired and strengthened the crusading zeal of the Hapsburgs against infidel and heretic. The Holy Roman Empire which was the object of Voltaire's jest deserved in his time no one of its appellations; but it had ceased to be Roman and Imperial before it had ceased to be Holy.

Between the medieval vision of the empire and the secular internationalism of modern times there is in reality no continuity and very little logical resemblance. As Engelbert of Admont suggested, what vitality there was in the medieval idea of universal empire depended on the existence of a single *res publica* united by common consent to a common religion and a common law. Modern internationalism, on the other hand, owes its origin and force to the very absence of such a community. It is the product of a world bound together by technical phenomena, which seeks to create the institutions of common government precisely because of the lack of that concordance of sentiment which makes common government at once more nearly possible and less imperative. The more doctrinaire manifestations of modern internationalism may recall Occam's warning that institutional unification is validated only by its effectiveness. But in its flickering hope that the use of common institutions may in time assist the growth of common sentiment, the modern world may find a way to realize what still is relevant in the medieval dream, 'aiming particularly at this mark, that mortals in their little space may freely live with peace.'

### Alexander of Roes (?)

[The authorship and date of the treatise from which the following selection is taken is by no means certain. Modern opinion tends to favour the theory that a short treatise *De Prerogativa Romani Imperii* was written sometime in the course of the Interregnum by a certain Jordan who appears in the records of the cathedral of Osnabrück at various times between 1251 and 1283 as *master*, *canonicus*, and *scholasticus*, and who is otherwise unknown; that this treatise was continued after the election of Rudolf of Hapsburg, perhaps ca. 1281, by a certain Alexander of Roes, a canon of a church in Cologne who was at the time attending Cardinal Jacopo Colonna at the papal curia;



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that this continuation was written immediately under the impact of events at the election of Martin IV which foreshadowed Martin's pro-French policy. This theory has been developed by the most recent editor of the treatise or treatises; the following selection is from the part ascribed to Alexander of Roes: *Alexander von Roes, De Translatione Imperii, und Jordanus von Osna-brück, De Prerogativa Romani Imperii*, ed. Herbert Grundmann (Leipzig, 1930), pp. 26-27.]

. . . . It should be known that the holy Charlemagne, emperor by the consent and command of the Roman pontiff, by divine inspiration instituted and ordained that the empire of the Romans should forever rest on canonical election by the princes of the Germans. For it did not seem fitting to him that the sanctuary of God, that is, the kingdom of the church, should be possessed by hereditary right, considering that he himself was directly descended from the Greeks, the Romans, and the Germans, and that both his father Pepin, in the first place, and later he himself had, with the aid of the Franks, that is, of the Germans, freed the city of Rome and the church of God from the Lombards who had infested it. . . . Further, since he himself was king of the Franks, and that kingship had come to him by inheritance, it would have been impious and indecent of him to strip his heirs entirely of royal dignity. Therefore he decreed (beginning what his grand-nephew Henry [the Fowler] achieved) that the French (*Francigenae*) should have an hereditary king of the royal blood together with a certain portion of the kingdom of the Franks, and that this king, as the descendant of an emperor, would recognize no superior in temporals to whom he would be liable for homage or any service. To this king, his heir, in recompense for the kingdom of which he was depriving him, he also assigned the *studium* of philosophy and the liberal arts, which he transferred from the city of Rome to the city of Paris. And it is worthy of note—what a due and necessary order required—that, even as the Romans, as senior, were endowed with the priesthood, so the Germans, or Franks, as junior, were endowed with the empire, and so also the Francigenes or French, as the more acute, were endowed with the *studium* of sciences, that even as the constancy of the Romans firmly upholds the catholic faith, so the valour of the Germans should imperially command it to be held, and the subtlety and eloquence of the French should prove and demonstrate with the firmest reasoning that it ought to be held by all. By these three, namely, priesthood, empire,

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and *studium*, as by the virtues, namely, the vital, the natural, and the animal, the Holy Catholic Church is spiritually vivified, enlarged, and ruled. By these three, as by foundation, walls, and roof, the church is materially made perfect. . . . Let those, therefore, whose responsibility it is see to it that this house remains whole and intact, lest (may it be remote!) Antichrist or his precursors enter, not through the gate but through the broken walls, and kill the flock and its shepherd.

### Disputatio Inter Clericum et Militem

[The *Disputatio inter Clericum et Militem* is a brief anonymous treatise, written in the first phase of the controversy between Boniface VIII and Philip the Fair, probably in 1296 or 1297. It is in the form of a lively dialogue between a knight and an ecclesiastic on the issue of the king's right to tax the clergy. The knight gets the best of the argument. The author was presumably a layman and was obviously expanding the theme of the vigorous *Antequam Essent Clerici*, which appears to be a draft for a reply by Philip to the claims of *Clericis Laicos*. Numerous manuscripts attest the popularity of the *Disputatio*; it was expanded in the popular *Somnium Viridarii* of the late fourteenth century; an English translation appeared in the sixteenth century.

The selection translated below is based on the text in Schard, *De Jurisdictione*. . . . (Basel, 1566), pp. 677-687, at pp. 686-687.]

CLERK: Emperors, not kings, established these exemptions of the clergy; therefore, Sir Knight, the guidance of the laws will now be controlled by good emperors.

KNIGHT: This answer is blasphemy. And since you seem to be ignorant of the origin of the kingdom—or, as seems more likely, you begrudge its dignity—if you examine the register of Charlemagne and look at the best histories, you will find that the kingdom of France is a portion of the empire, most noble in rank, separated from it by equal division, and marked by equal dignity and authority for about five hundred years; therefore whatever privilege and dignity the name of empire implies in the one part, the kingdom of France has in the other. For when the kingdom of the Franks was cut off from the rest of the empire by fraternal division, whatever supremacy and authority the empire itself formerly held or rightfully exercised within the part which was split off from the present empire was surrendered by it to the prince

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or king of the Franks in the same fulness. And therefore, even as all things that are within the boundaries of the empire are known to be subject to the empire, so those that are within the boundaries of the kingdom are subject to the kingdom. And as the emperor has the right to establish laws over the whole empire, to add to them and to withdraw them, so also the king of France has the right either to repudiate the laws of the emperors altogether, or to change them as he pleases, or, after they have been prescribed or abolished from his whole realm, to promulgate new laws if it pleases him. Otherwise, when as often happens, it seems that something new ought to be established, if the king, who is supreme, cannot do this, then no one can, because there is no superior above him. And therefore, Lord Clerk, curb your tongue and recognize that the king by royal power is above the laws and customs and the privileges and liberties granted to you, and can add or diminish or modify whatever he pleases, so long as he consults equity and reason, or takes counsel with his magnates.

### Rex Pacificus

[The short treatise known from its opening words as *Rex Pacificus* was one of several defences of royal authority written in 1302 in immediate answer to the pro-papal books of Aegidius Romanus and James of Viterbo. It has been attributed to the Masters of the University of Paris; or to 'a jurist who knew some theology'; it is an able work, characterized by emphatic regalism and nationalism. The text from which the following selection is translated is in Pierre Dupuy, *Histoire du Différend d'entre le Pape Boniface VIII et Philippe le Bel Roy de France* (Paris, 1655), *Preuves*, pp. 663-683, at pp. 675-676.]

Therefore the pope is not supreme lord in temporals in regard to those kingdoms that are not under the Roman empire. Now the kingdom of France is not under the Roman empire; rather there are and have been from time immemorial definite boundaries by which the kingdom and the empire are divided. Therefore the pope is not lord in the kingdom of France, nor supreme in temporals, but only in spirituals, as he is everywhere on earth. . . . But if anyone should say that in temporals the king and kingdom of France are under the Roman empire by right, and consequently under the pope, although in fact a

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different situation prevails, we oppose this claim. For through legitimate prescription right is acquired for the prescriber. Now no prescription is more legitimate, in regard to the passage of time, than that which endures for a hundred years, and such prescription is valid against the Roman empire. Now for more than a hundred years the kings of France have been in peaceful possession of the right to have God alone as their superior in temporals, recognizing no other superior therein, neither emperor nor pope. Whence it appears that through long-continued possession they have acquired in this way the right of highest supremacy in their realm. Nor does it avail if it be said against this that for prescription, however long, to be valid, it is necessary that the prescriber have good faith, since a possessor in bad faith cannot prescribe. For it is clear that the kings of France were in good faith in that possession. For they were always faithful to the church, and furthered the rights of the church, as many examples show us. . . . For Louis, great-grandfather of the lord king who now reigns, died on his way to fight the Albigensians for the defence of the church. His father Philip passed to God while pressing the cause of the church in Aragon. The blessed Louis, Philip's grandfather, paid the debt of all flesh at Carthage for the extension of the Christian faith. And certainly, if he had not been in good faith in the aforesaid prescription of supremacy, he would never have been canonized by the church, nor would Jesus Christ, the Author of the faith, have proved his sanctity by so many and so great and so manifest miracles. Through this same reasoning it can be concluded that the king of France has the full right to take *regalia*, that is, episcopal revenues, when the episcopates are vacant in any churches in France, and to confer ecclesiastical benefices, the grant of which belonged to those bishops when they were alive.

### John of Paris

[The following selection is translated from ch. 3 of the *De Potestate Regia et Papali* of John of Paris, also written in 1302. I have used the text ed. Jean Leclercq as an appendix to his *Jean de Paris et l'ecclésiologie du xiii<sup>e</sup> siècle* (Paris, 1942).]

. . . . By divine institution, all ministers are subordinated to one head. However, the faithful laymen are not thus instructed by divine law



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that in temporal affairs they should be subject to one supreme monarch; but they learn from natural instinct, which is from God, that they should live civilly and in a community; and, consequently, that in order to live well in common they should choose various rulers, according to the variety of communities. But they are taught neither by natural inclination nor by divine law that they should all be subjected to one supreme monarchy in temporal affairs; nor is it suitable for them as it is for the ministers of the church.

First, because, just as there is diversity in men as regards the body but not, however, as regards the soul (since all are constituted in the same rank of being on account of the unity of the human species): so secular power has more diversity, in accordance with the diversity of climates and complexions, than has the spiritual power, which varies less in such respects. Whence it is not fitting that there be so great a diversity in the latter as in the former.

Second, because one man alone is not enough to govern the whole world in temporal matters, as one is enough in spiritual affairs: because the spiritual power can easily convey its censure to all men whether near or far, since this is verbal; but the secular power cannot so easily bring its sword effectively to distant men, since its sword is manual; for it is easier to extend a word than the hand.

Third, because the temporal goods of the laity do not belong to the community, but each man is lord of his own goods, as acquired through his own industry, as will appear below [ch. 7]; and therefore they do not need a common administrator; but each man is, at his pleasure, the administrator of his own goods. The goods of the church, on the other hand, were granted to the community, as will be seen below [ch. 6]; and therefore there must needs be someone at the head of the community as a common administrator and common disposer of all its goods. But it is not necessary that some one man should be at the head of the whole world in regard to the temporal goods of laymen, as it is in regard to the temporal goods of the church.

Fourth, because all the faithful join together in one catholic faith, outside which there is no salvation, and it often happens that questions arise in diverse regions and kingdoms concerning things pertaining to the faith. And therefore, lest by the diversity of controversy the unity of the faith should be destroyed, it is necessary, as has been said, that one man be superior in spiritual matters, through whose decision

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such controversies may be terminated. It is not, however, necessary that all the faithful be similarly united in some general commonwealth, but, in accordance with the diversity of climates, languages, and conditions of men, they can be of diverse manners of living and diverse constitutions; and what is virtuous in one people is not virtuous in another. . . .

Therefore it is not so necessary that the world be ruled by one man in temporal affairs as that it be ruled by one man in spiritual affairs; nor is this to be found in natural law, nor in divine law. Wherefore the Philosopher shows in the *Politics*, [bk. 1, ch. 1], that the development of individual cities or kingdoms is natural, but not the development of an empire or monarchy. Augustine also, in the fourth book of *The City of God*, [ch. 14], says that a commonwealth is better and more peacefully ruled when authority terminates at the boundaries of the fatherland. And in this book he also says that the cause of the destruction of the Roman empire was its own ambition to rule, or the provoking of foreign injuries. And thus it is not derived from natural law that there should be one monarch in temporal affairs as there is in spiritual affairs. . . .

### Engelbert of Admont

[Engelbert was born in Volkersdorf ca. 1250 of a noble family; his career was that of a monk and a scholar. He began his liberal arts education at Prague; when the election of Rudolf of Hapsburg compelled Austrian and Styrian students to leave Prague, he went to Padua, where for five years he studied logic and philosophy under the noted scholar William of Brescia; he then continued his study of theology under Dominican auspices. Ca. 1297 he became abbot of the monastery of Admont in Styria. He died in 1331, leaving behind him a considerable heritage of theological and other works, including an early poem on Rudolf of Hapsburg and two publicistic treatises, of which the *De Ortu et Fine Romani Imperii* is the more important. He was regarded as one of the distinguished scholars of his day.

The *De Ortu et Fine Romani Imperii* was written under Henry VII, and obviously before his trip to Rome; it is therefore dated between 1307 and 1310. Besides giving evidence of Engelbert's thorough knowledge of Aristotle and Augustine, and of his generally broad scholarship, it shows an intimate understanding of many aspects of the imperial question of his own

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day and a particular acquaintance with the earlier work of Jordan of Osna-brück. The view which it represents is in some ways characteristically German, and the treatise was never widely known outside Germany. The following selections from the preface and chs. 15, 16, and 18 are translated from the text printed in Basel in 1553.]

### PREFACE

Once when some friends of mine—prudent and mature men—were sitting and talking with me, it happened that mention was made, among other things, of the Roman empire or kingdom and its condition; some asserting that, inasmuch as this empire or kingdom had weakened in right and might, which seemed to be true, it must in a short time fail and vanish altogether; others saying that, even as from the beginning of its rise the Roman empire had illicitly and unjustly subdued the kingdoms of the world and the peoples of diverse nations and tribes by force of arms and wars, so also that empire would at last and henceforth continually be attacked and threatened by diverse kingdoms and principates and nations until in a short time it would be totally destroyed. After this conversation and discussion was over, at the request of some of those who were present and because of my own interest in the subject, I composed and drew up the following little book on the origin, development, and end of kingdoms, and especially of the Roman kingdom or empire, adding reasons and authorities and relevant examples; for I believed that readers would attain some solace, and that not useless, from the exploration and study of this problem.

### CHAPTER XV

. . . . We ask whether it is more just and better that all kingdoms be under one king or emperor as monarch of the whole world, or that single kingdoms stand apart and be governed by their own kings with no superiors. And it seems that it is more just and better that all kingdoms and all kings be under one monarch, since the first invention and establishment of kingdoms and kings emanated from nature, as appears among beasts; for among beasts, the lion is king of all, and among birds, the eagle is king over all other winged things. Now art and reason imitate nature. And the invention and establishment of kingdoms and kings in human society comes from art and

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reason, which are the directive principles of human acts. Therefore, in the kingdom of men also, one man will be king and lord of all.

Again, in every ordained multitude the many are subordinated to the few until we reach the apex, to which all the others are subordinated as to their chief and principal, as appears in well-ordained armies. . . . And such an ordination is chosen and maintained as the best in all armies of kings, and in courts, and in regal halls which are well ordained. Now the character of a whole parallels that of the parts. Therefore, if in single kingdoms this is to be chosen as best, that there be a hierarchy of all up to one king and lord of all, then it will be best for the whole multitude of kings and kingdoms.

Again, the common good is better and more to be sought after than the good of individuals, and the commonweal more than private weal, because the good of individuals, and the private weal, is sought for the sake of, and ordained to, the common good and commonweal. But the good of a household is to the good of a city, and the good of a city and people is to the good of a nation and kingdom, as the lesser good is to the greater good and as the individual good is to the common good. Therefore, since in an ordained multitude the nature and end of ordination is not to plurality but to unity, and since there are many kingdoms in the world: therefore, even as many households are ordained to one city, and to its good, and as many cities and people of cities are ordained to one nation and kingdom, and to its good, as a particular and private good is ordained to the common and public good, and as a lesser good is ordained to the greater good, and as a part is naturally ordained to a whole, so also the many kingdoms of the world and their goods are ordained to one natural kingdom and empire as a particular good is ordained to the common good of all nations and kingdoms, and as a private good is ordained to the public good, and as a greater good is ordained to the greatest good, and as parts are naturally ordained to a whole.

Thus Augustine wrote in the nineteenth book of *The City of God* [ch. 21], quoting the words of Cicero in his book *On the Commonwealth*, that the commonweal is the people's weal and that the people is a multitude of men associated into one whole by common consent to divine and human law, etc. Therefore, where there is one law divine and human, and one concord and consent of the people to that one law divine and human, there will be one people and one commonweal.



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Moreover, where there is one people and one commonweal, there will necessarily be one king and one kingdom. But there is only one true divine law in the whole world, namely, the canons and laws which are consonant to the divine law; because human law takes its authority and principles from divine law and not *vice versa*. And there is only one consent of the people to that divine and human law, namely, the Christian faith; and there is only one people, namely, the Christian people, consenting by faith to that law divine and human; and consequently there is only one commonweal of the whole Christian people. Therefore there will necessarily be only one prince and king of that commonweal, appointed and established for the extension and defence of that faith and of the Christian people. From which argument Augustine also concludes in the nineteenth book of *The City of God*, that there never was, nor could be, nor can be a true empire outside the church, although there were emperors of a sort, in a relative, not an absolute sense, outside the Christian faith and church.

Again, the whole constitution of this world, which is made up of things diverse, unlike, and contrary, cannot endure except through the concord of the diverse, the unlike, and the contrary. And concord is not brought about or made firm through an automatic harmony, but through a Maker of harmony, who is One alone, distinct from those things which are being harmonized: namely, God Himself, Author and Prince of the whole, according to Job 25: [2], 'Who maketh peace in His high places,' etc. And according to Damascene this argument is, as it were, a necessary proof and demonstration of the existence of God, because the structure of this world is so constituted that superiors would destroy inferiors by their motion and impetus, and the active elements would by their power conquer and destroy the passive, and the greater would consume the lesser, if there were not some one omnipotent power, distinct from them all, to harmonize all things with one another, and to preserve their peace. But, as was said above, the kingdoms of this world are diverse from one another, according to the diversity of fatherland and tongue, and of customs and laws. Now this diversity of nations and kingdoms . . . is the cause and occasion of hostility and discord, nation against nation, and kingdom against kingdom. Therefore, there will necessarily be some greater and superior power which will have force and authority to harmonize them, and to ordain and preserve concord among kingdoms and

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nations which are diverse from and hostile to one another; otherwise God's providence for ordaining and preserving the kingdoms of the world would be insufficient and incomplete. Now it is wrong to say or think such a thing and contrary to what is said in the Psalm [113:5, 6], 'Who is like unto the Lord our God, Who dwelleth on high, and hath regard to the humble in the heaven and on the earth?' etc. . . . Therefore by the ordination of divine providence there will necessarily be some one power and dignity which is supreme and universal in the world, to which all kingdoms and all nations of the world should by right be subject in order to make and preserve the concord of nations and kingdoms throughout the world.

Furthermore, those things that exist and are done in the world, not rarely or seldom but often and frequently, are not the result of chance or fortune but of nature, or of human art and reason, or of divine providence; but monarchy throughout the world or the greater part of the world does not exist seldom or rarely but often and continually and frequently, as is evident. First, in the beginning there was the monarchy of the kingdom of the Assyrians in the east, which, according to Augustine in the fifth book of *The City of God*, [chs. 6-7], lasted from the time of Ninus, the first king of the Assyrians, for twelve hundred years, till the killing of Sardanapalus, who was the last monarch of the Assyrians; at his death the monarchy of the world was transferred from the Assyrians: first to the Chaldeans or Babylonians; then through Darius and Cyrus to the Medes and Persians; then from the time of Darius the First and Cyrus, kings of Persia and of the Medes, the monarchy was held by the Medes and Persians for two hundred and thirty-three years, till the killing of the last Darius. At his death the monarchy, under Alexander the Great, was transferred from the Medes and Persians to the Greeks; under the Greek kings who succeeded Alexander the Great it was divided between the north and the south, and, continually fluctuating from one to the other, did not remain fixed, but like a rapid river ran down three hundred years to Antony and Cleopatra, under whom the kingdom of the Greeks ceased altogether. By the battle of Actium the monarchy passed to Octavius, the first monarch of the Romans, who are to the west of the kingdoms of the Assyrians and of the Persians and of the Greeks. Therefore the constitution and succession and continuation of the monarchies of the world, beginning in the east and moving through

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the south and north to the west, owed its existence not to chance or fortune, but to the same divine providence that rules over the course and nature of the world, and over every art and human reason, which imitates nature and follows after the divine providence. Thus Augustine correctly distinguishes in his sixth book *On Genesis* . . . two methods by which the divine providence ordains the things that exist or are done in the world: namely, the nature of things, and human art and will; for through the mediation of these two God provides, and provides for, all things in this world.

### CHAPTER XVI

It could also be argued, on the other hand, that it would be more useful for all kingdoms to stand separately without a monarch than for them to be under one man, like the Roman king or emperor. For Augustine says in the fifth book of *The City of God*, [ch. 15], that human affairs would be happier if single kingdoms were separate, not subject to one monarch, so that the individual kingdoms might contribute to one another's happiness as peaceful neighbours. Even as in many places there are many households, separate from one another, and quiet in themselves, and peaceful, which do not make one village, and many villages separate from one another, and peaceful, and quiet, which do not make one city, therefore in the same way single kingdoms could retain their independence peacefully and quietly without being under one empire. Therefore, etc.

Again, he says in the same place that the kingdom of a monarchy ought, since it is set above all other kingdoms, to be also larger than all the other kingdoms; now, in proportion as it is larger than the others, it would be more unquiet than the others, since, as the Philosopher says in VII *Politics*, [ch. 4], only a man of divine virtue can rule huge and enormous states. Therefore, even as any sane person would rather have a small body, if it was healthy and quiet, than a big body, sick and unquiet, so also any kingdom in the world which was small and quiet would be preferable to a kingdom larger than all others and always more turbid and unquiet, such as the kingdom of the Romans is now, and always was.

Again, according to the Philosopher in II *Physics*, that which does not attain its own end exists in vain; now the end for which monarchy is established is that the monarch should make peace among the other

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kingdoms subjected to him and hostile to one another, harmonize their discords, confirm their harmony, coerce and repress those which resist peace and concord, and preserve and protect in tranquil security those which keep peace and concord and are obedient and faithful to him. Now we rarely read in histories, and never have heard, and do not see in modern times that any of the Roman kings or emperors has for his time perfectly achieved this end; but rather that they have been provoked to continual wars by daily and ceaseless rebellions of states and peoples, of princes, nations, and kingdoms, so that, except in the time of Numa Pompilius (who succeeded Romulus, the first Roman king) and Octavian (who was the first emperor of the Romans), the gates of Janus, whose closing was a sign of peace and quiet through the whole sphere of the Roman empire, were never long closed under any kings or emperors. Rather, from the time of Octavian, the first Augustus, up to Henry the Seventh, who sat on the imperial throne in our time as ninety-seventh emperor after Augustus, the majority of Roman kings and emperors were either killed in war or slain treacherously by sword or poison. It seems, therefore, that the empire or kingdom of the Romans, from its beginning to this very day, was more frequently a cause of turmoil and wars to all the world than a cause of peace and quiet, and that it was harmful to itself and to other principates and kingdoms. And thus the kingdom and empire of the Romans existed in vain, since it never attained and perhaps never will attain its end, which is to govern all kingdoms peacefully in concord with one another under obedience to its empire.

Again, of similar cases we make similar judgments. But we see that other kingdoms, which are not under the Roman kingdom or empire, have had good and harmonious relations with one another most of the time, and with other kingdoms whether subjected to the Roman empire or not. Therefore what is possible and appropriate in them, and not useless nor unjust, namely, that they are not under the Roman empire, is similarly possible and appropriate in all other kingdoms and principates, and not useless nor unjust.

Further, as the Philosopher says in *III Politics*, [ch. 11], a king is an animated law, etc. This is the basis of the distinction between regal kingship and political kingship, since a polity rules its people according to written law, but a king rules a kingdom according to both kinds of law, written and unwritten, since, as the Philosopher says in the same



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place, he who rules only according to written law, and not according to his own will and reason, ought not to be called a king in the absolute sense. But law, whether written or unwritten, cannot be the same for nations who are diverse in language and fatherland and in inherited rites and customs. Therefore there cannot be one king or emperor over diverse nations differing from one another in languages and ancestral customs and traditional rites.

Again, it seems that there ought not to be, and cannot be, one monarch of all nations and kingdoms throughout the world, since where there cannot be one commonweal of all there cannot be one monarch of all. But Jews and Gentiles and Christians do not and cannot form one commonweal; therefore they cannot have one monarch. The major premise is clear, since where there cannot be one people there cannot be one commonweal, since a commonweal is nothing but the common weal of a whole people. But Jews and Gentiles and Christians cannot form one people, therefore not one commonweal, and consequently they cannot have a single monarch. The minor premise of this argument is proved as follows: a people is a multitude associated together by a common and harmonious consent to divine and human law, but Jews and Gentiles and Christians do not agree in one divine law, because the divine law is the true faith and the true religion of God, in which Jews and Gentiles and Christians differ from and disagree with one another. Therefore Jews and Gentiles and Christians cannot form one people; therefore they cannot make one commonweal, or one king, or one kingdom.

Again, it seems that the Roman kingdom and empire could licitly and justly be abolished, since similar causes justify similar effects. But—licitly and justly, as it seems—the Roman empire in ancient times was truncated and diminished from two causes: first, by Hadrian, who ruled about 123 A.D., and who for reasons of expedience set the boundaries of the Roman empire at the boundaries of the kingdom of the Persians, since it seemed neither advantageous nor possible to hold or defend the still unconquered Persians under the yoke of the Roman empire, because of the distance and inaccessibility of that kingdom (although the historians say that Hadrian did this because he begrudged the victory and glory of Trajan, who had defeated the Persians and added them to the Roman empire). Secondly, by Jovinian, who reigned about 363 A.D., and who, when the Roman army was lost around the

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borders of Persia in the straits of desperate war because of the rashness of Julian his predecessor, freed them by a compact which, because of necessity, yielded to the Persians, and established the boundaries of the Roman empire at the Euphrates. Therefore it seems that, for similar reasons operating further, for reasons of expedience or necessity (which are just causes), the boundaries of the Roman empire could be diminished or truncated, and especially in those times in which the Roman empire is weakened in right and might. Now what can be continually more and more diminished can at last be altogether destroyed or abolished. Therefore if the empire can for some reasons be justly diminished, it can also, as the same causes grow stronger, be wholly destroyed and abolished.

Again, the kingdoms of Spain, the kingdom of France, the kingdom of England, and the kingdom of Hungary, with the kingdoms of the Slavs, of Bulgaria, and of Greece, which once were under the Roman empire as provinces or kingdoms, are not now legally under the empire; and in Africa and in Asia beyond the sea that empire now holds nothing. Therefore even as these kingdoms have been severed from the empire for causes which seem just and licit, so for the same causes those kingdoms and principates which are still under the empire could also be alienated. And thus it also seems that the empire could legally be altogether destroyed and abolished, if causes similar to those which have been mentioned should arise.

### CHAPTER XVIII

Therefore, having noted and set down these things, we say, in answer to the question, that, so long as the course marked out by God for the things of the world shall please Him, it is and always will be better and more just that all kingdoms and all kings be under one empire and Christian emperor, so far as is proper and suitable for each kingdom by right or by rational and established custom, than that single kingdoms and kings should stand apart without any subjection and obedience to the empire, like many heads in the one body of the Christian commonweal, which is one commonweal of one Christian people and therefore has one head of all, unless someone should wish to make a many-headed monster of that commonweal, of that one Christian people. Therefore we accept the arguments which commend and approve the constitution and condition of one empire and one head in

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the world for four reasons: first, because of the example of universal nature; second, because of the order of the whole political community; third, because of the unity of the body of the church and of the whole Christian commonweal; fourth, because of the righteousness and beauty of the order of divine providence and grace.

As for the arguments to the contrary, in answer to the first it should be said that the saying of Augustine, that it is better that single kingdoms should be separate, . . . presupposes the following condition: that these kingdoms could perpetually maintain peaceful and neighbourly relations with one another, even as in the celestial kingdom of future glory all the blessed will perpetually rejoice together in peaceful society, for when this future peace is attained all power and prelacy will cease. Now this cannot possibly happen for the felicity of the present life, which is inherently variable and impermanent; and therefore, in order that kingdoms may be brought to concord among themselves and that the world may be at peace and Christianity protected and extended, it is better and more just that all kingdoms be under one empire, in whatever way and to whatever extent befits the legal rights of each, rather than that single kingdoms should be separate, without any regard to the empire. Because, if there should be war today, as there has often been in the past, between all Christendom and the pagan world, or between the greater parts of both, it would be more just and more noble that all Christians should be united under the one head of the empire, the emperor (since such a war could not prosper unless all were united under one head), than that someone else should be elected captain, leader, or king for that particular period.

To the second objection, that the kingdom or empire of the Romans exists in vain because it never attains its end, . . . I answer that perfectly and absolutely to hold all its members at peace in itself and under itself belongs only to the felicity and beatitude of the future kingdom of the heavens, when all prelacy and power will cease and God alone will be all in all, when Christ, as the apostle tells us [I Corinthians 15:24-28], will have delivered up to God the Father the universal and eternal kingdom of the heavens, bought and redeemed with His blood, pacified and united. To the felicity of the present kingdom, which is not and cannot be absolutely perfect, but only comparatively so, it suffices that the king pacify the members of his kingdom as much as he can, and as long as he can; nor does he therein fail to attain his end. For even as the

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end and fruit of the true and perfect felicity of the future kingdom of the heavens is to have and possess the joy of its perfect and eternal peace—according to the Psalm [147:14], ‘Who has made peace in thy borders,’ etc.—so the end and fruit of the present felicity of the temporal kingdom is continually to strive with zeal and joy toward the ordaining of peace for itself and for its members, even though it can never really attain that peace. For even as it is proper to the future perfect felicity of the kingdom of the heavens that it alone is in the secure and quiet condition of its peace, so it is proper to the present kingdom that it is happy, not because it rests in quiet, but because it is always in the act and motion of striving and driving, as much as it can, towards its peace; and by this it earns eternal peace. Moreover it can do as much as the condition of the times permits; and in doing as much as he can every king and prince of this earthly kingdom is and will be no less happy, as the best shoemaker is not he who always makes the best shoes—which certainly none of them can do—but he who makes the best that can be made with the leather now given him. . . .

To the third objection, that even as we see that those kingdoms which are free and exempt from the Roman empire bear themselves most pacifically toward one another, and do not need the help and work of the Roman empire to make peace among them, and that their liberty and exemption is no less useful, possible, and just, in the same way it would be possible and useful and just that the other kingdoms should be free and separate, etc., I answer that the subjection of all kingdoms is not useful and necessary and just merely that such kingdoms may be brought to peace and harmony with one another through that empire, as we have seen done in the case of the kingdoms and principates which are now subject to the empire, although there is discord among other neighbouring kings and princes who are outside the sphere of the empire’s aid; but the subjection of kingdoms to the empire is just and useful and necessary especially for this purpose: that the church and the faith may be defended by all its members when they are brought to concord and unity under their own proper head against those who are outside the church, and outside the faith, and against the church, and against the faith, and that it may extend its boundaries to enlarge the place of its tabernacle. And for this reason we believe that no Christian kingdom is free or exempt from subjection and obedience to the



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empire. Nor would it be useful or just that all the other kingdoms be in the future free and exempt from the empire because some are now free and exempt on account of some particular merits or outstanding services performed for the perpetual utility of the Roman empire, for which prerogatives of this sort have been bestowed by the empire, even as the Emperor Valentinian for such reasons endowed the tribe of the Franks with liberty, as Gregory of Tours writes, and Anastasius, as Jordanus tells, freed the tribe of the Goths, to whom was granted that part of Spain which they now hold, and who are now called Aragonese. But the privileges of a few do not make common law, and if all kingdoms were free and exempt from the empire, it would not be, and could not be called, exemption from the empire, but rather the annihilation and total destruction of the empire, such as is to come, according to the prophecy of the apostle Paul [II Thessalonians 2:3], when in the approaching time of the coming of Antichrist there will come first the falling away of all kingdoms from the empire, then of churches from their obedience to the apostolic see, and finally of the faithful from their faith. . . . For then, when the church is headless and vacant, and the members accept no influence from their heads in temporals and spirituals, there will be room and opportunity for deception and for the domination of Antichrist. Thus those who apply their zeal and ingenuity to weakening and shattering the empire seem to be hastening directly toward the preparation of room and opportunity for the tyranny of Antichrist.

To the fourth objection, that it is not possible nor advantageous that there be one law for peoples who are diverse among themselves in language and fatherland and customs and traditional rites, and that therefore they cannot have one king . . . , I answer that in this matter one expects an emperor, who is above kings, to be of another nature than a king. For even as law (using the word law in its general sense) is divided into natural law, which is the common law of all peoples, and positive law, which varies with the diversity of peoples according to diverse fatherlands and customs and traditional rites, so individual peoples have individual kings, who rule and govern each people in accordance with its own laws, suitable to its fatherland and customs and rites. But it is not only possible, but also necessary and useful, that in accordance with natural law, which is common to all peoples and kingdoms, or in accordance with those parts of the Roman law which

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can justly and usefully be suitable to all peoples and kingdoms, and which all peoples and kingdoms are bound to observe within themselves and with their neighbours and with foreigners, all kingdoms together should obey the one Roman empire, either in order that the peace and quiet of each kingdom and people within itself and with outsiders should be preserved, as in the case of Christian kingdoms, or at least in order that those Christian kingdoms themselves should not be invaded nor disturbed by others, as by kingdoms of infidels and pagans, which are considered to be under the Roman empire to this extent; for to assign to each his own and not to injure another unjustly are not only principles of Christian law but also of the law of peoples and of all men as such; and in order that this may be preserved for the Christian kingdoms infidels and pagans themselves can and should be legally subject to the coercion of the empire.

The solution of the fifth objection appears from what has just been said, because, although Jews and pagans do not form one commonwealth nor one people with Christians in regard to those things which (to the extent of the difference between their sects and the details of our faith, and other things) distinguish us from them, yet they ought to be under the empire and to obey it in those matters which can be common to us and to them by natural law or the law of peoples; namely, that to each should be assigned and maintained what is his own, and that none should be unjustly injured by others.

To the sixth objection, that in early times some emperors . . . seem to have licitly and usefully limited and restricted the boundaries of the Roman empire . . . it is answered that it was by no means licit for the Emperor Hadrian, or Jovinian, to surrender territories of the empire and renounce them absolutely and limit the empire within its due boundaries; nor was it ever licit, nor will it be licit, for any emperor to do so; for then he would sink from the name and dignity of *Augustus*, which means that he ought always to increase and never to diminish the empire. . . .

The solution of and answer to the seventh objection appears in those things which were said above in answer to the third argument, since both objections and both solutions are based on the same reasoning.

## Dante Alighieri

[Dante Alighieri was born in Florence in 1265, of an undistinguished family. He was presumably educated in Dominican schools in Florence, where he acquired the bases of a very respectable knowledge of the theology of Albert the Great and Thomas Aquinas. Beyond his early training, his education was his own, and wide reading gave him a rich knowledge of classical and medieval vernacular literature and oriented him in contemporary intellectual trends.

His early life was that of an ordinary citizen, conspicuous only in literary circles for his development of vernacular lyric poetry and of the cult of the ennobling influence of love which he wove around the figure of the unattainable Beatrice. After 1295, he took a slight part in public life, which resulted in his election in 1300 to the not very important office of prior of Florence. This involved him in local politics and as a Ghibelline in opposition to Boniface VIII. In 1301, when he was absent from Florence, political fortune brought about the ascendancy of the papal influence, and in January, 1302, Dante's name appeared on the list of those who were banished from Florence.

From that time until his death in Ravenna in 1321 he roamed Italy and never re-entered Florence. In these years he continued the defence of the vernacular tongue in his *De Vulgari Eloquentia*; he began the *Convivio* (ca. 1300-1308), planned as a sort of vernacular encyclopedia for the education of those who could not read Latin; he then left both projects uncompleted to turn to the vast design of the *Divina Commedia*. The *Convivio* includes a brief statement of Dante's theory of empire, in relation to the thesis that the authority of Aristotle and that of the emperor are both supreme in their distinct spheres: Aristotle in philosophy, the emperor in practical affairs.

There is no precise evidence as to when the *De Monarchia* was written; it has been variously dated, but most commentators agree in relating it to Henry VII's descent into Italy and therefore placing it between 1310 and 1313. Its intellectual context is obviously the doctrine of the derivation of the empire from the papal authority, as developed by the thirteenth-century canonists and by Tholommeo of Lucca, whose *De Regimine Principum* he seems to have known and whose *Determinatio Compendiosa* he probably knew. He did not, apparently, know the *De Ortu et Fine Romani Imperii* of Engelbert of Admont; nor is there any evidence that he knew any of the publicistic writings that appeared in Paris at the opening of the fourteenth century, whose analysis of the problem of church-state relations involved subtleties of which the *De Monarchia* is innocent. It has been suggested that the sharp separation which Dante tried to make between the

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secular and spiritual realms indicates Averroist influence, but there is no clear evidence of specifically Averroist ideas in his thought. The most conspicuous positive sources for the *De Monarchia* are the *Nicomachean Ethics* of Aristotle, the theology and some, at least, of the political thought of Thomas Aquinas, and some specific arguments, such as those related to the Donation of Constantine, which were current in civilist circles. The *De Monarchia* seems to owe little, unless perhaps its original motivation, to Dante's own political experience. Its tone is remote, idealistic, and highly abstract.

The *De Monarchia* was apparently not well known during Dante's lifetime; later interest in it was stimulated by the march on Rome of Lewis of Bavaria. Heretical theses in the *De Monarchia* were pointed out by the Dominican Guido Vernani ca. 1327 (see pp. 236-238 above); other treatises of the period seem to be attacks upon it; on the other hand, it was well liked by the civilists. John XXII condemned it in 1329; it was placed on the Index in 1554 and removed only in the nineteenth century.

The selection translated below covers the greater part of book 1, and is based on the text of the *De Monarchia* in E. Moore, ed., *Tutte le Opere di Dante Alighieri* (3rd ed., Oxford, 1904), pp. 341 ff.]

### CHAPTER II

We must first determine what we mean by temporal monarchy: its nature and its intrinsic purpose. Accordingly, temporal monarchy, or empire, is a single government over all men temporally: that is, in regard to those things and over those things that are measured by time. And on this topic three questions, in particular, arise. First, one may ask whether temporal monarchy is necessary to the well-being of the world. . . .

Now, since every truth that is not a first principle is made manifest by deduction from the truth of some principle, it is necessary in any inquiry to know the principle to which we may have recourse analytically in order to certify the truth of all the propositions subsequently derived from it. . . . Since, in practical affairs, the principle and cause of all things is the ultimate end, . . . it follows that the whole character of those things that exist for an end is derived from the end itself. For we cut wood in one way to build a house and in another way to build a ship. Therefore, if there is any universal end of the civil society of the human race, this will be the principle here, through which all the things that are to be proved below will be sufficiently manifested. Now, to think that there is an end for each particular civil society, and that there is no one end for them all, is foolish.



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### CHAPTER III

We should now discover what is the end of the whole human society; and when this has been found, more than half of our work will be finished, as the Philosopher says in the *Nicomachean Ethics*, [bk. 1, ch. 7]. And to prove this, it should be noted that even as there is one end for which nature produces the thumb, and another different end for which she produces the whole hand, and again another, differing from both, for the arm, and another, different from all these, for the entire man, so there is one end for which God made the individual man, and for another end He ordains the household community; for another, the village; for another, the city; and for another, the kingdom; and, finally, there is a last end for which the eternal God, by His art which is nature, brings into being universally the human race; and this is the end which we seek here to be the directive principle of our inquiry.

Therefore, it ought first to be recognized that God and nature make nothing that is useless; but whatever He brings into being exists for the sake of some function. For in the intention of the Creator, no created being is an ultimate end, but the end is the function proper to that being. Whence it follows that the proper function does not exist for the sake of the being, but *vice versa*.

There is, therefore, some proper function of humanity as a whole, to which the universal multitude of men is ordained, to which, indeed, neither one man, nor one household, nor one village, nor one city, nor a particular kingdom can attain. What that would be would be manifest if one considered the ultimate potency of mankind as a whole. . . . It appears that the ultimate potency of mankind as such is the intellectual potency or power.

And because all that potency cannot be brought into act at one time by one man, or by any of the particular communities mentioned above, it is necessary that there be a great multitude of the human race, through which all this potency may indeed be actuated. . . . Moreover, this intellectual potency of which I speak concerns itself not only with universal forms or species, but also, through extension, with particulars. Whence it is commonly said that the speculative intellect, by extension, becomes the practical intellect, whose end is to do or to make. And I say this in view of things to be done, which are regulated by political prudence, and things to be made, which are regulated by art:

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all which are as it were handmaids to the best speculation, for which end the Prime Goodness brought into being the human race. . . .

### CHAPTER IV

It has, therefore, been sufficiently shown that the proper function of the human race, taken as a whole, is to actuate always all the potency of the passive intellect, primarily for speculation, and secondarily, for its sake, for operation, through extension. And because in so far as something is true of a part it is true of the whole, and because it happens in the case of a particular man that by sitting in quiet he is perfected in prudence and wisdom, it appears that the human race most freely and easily holds itself to its proper work . . . in the quiet and tranquillity of peace. Thus it is manifest that universal peace is the best of those things that are ordained to our beatitude. . . .

Thus from what has been so far demonstrated it is apparent through what means the human race may better—nay, best—attain to its proper work. And, consequently, we have seen what is the nearest way through which we may advance to that ultimate end to which all our works are ordained; and this way is universal peace, which may be taken as the premise of subsequent arguments. . . .

### CHAPTER V

. . . . Let the first question be whether temporal monarchy is necessary to the well-being of the world. This can be shown by the most powerful and most evident arguments, notwithstanding any contrary arguments or authoritative assertions; the first of these arguments is based on the authority of the Philosopher in [I] *Politics*, [ch. 2]. For there the authority of this revered thinker asserts that when several things are ordained to one end, it is fitting that one of them regulate or rule and that the others, on the other hand, be regulated or ruled. Indeed, we believe this not only because of the glorious name of the author but also through inductive reasoning.

For, if we consider one man, we see that this applies to him, since, when all his faculties are ordained to his felicity, the intellectual faculty is the regulator and ruler of all the others; otherwise he cannot attain felicity. If we consider a household, whose end is to prepare its members for the good life, there must needs be someone who regulates and rules: namely, the *paterfamilias* or someone who acts in his place. . . . If we

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consider a village, whose end is the suitable protection of persons and property, there must be one regulator of the others, either assigned to them by someone else or exalted from among themselves with their consent; otherwise they not only cannot attain to that mutual sufficiency, but also, if several seek to be preeminent, the whole community is destroyed. And if we consider a city, whose end is the good and sufficient life, there must needs be one government; and this holds true for a perverted polity as well as for a right one. If it were otherwise, not only would the end of civil life be lost, but also the city would cease to be what it was. Finally, if we consider a particular kingdom, whose end is the same as that of the city with greater security of tranquillity, there must be one king to rule and govern; otherwise not only do those who dwell in the kingdom fail to attain their end, but also the kingdom itself falls into ruin in accordance with that saying of infallible truth [Matthew 12:25; Luke 11:17], 'Every kingdom divided against itself shall become desolate.' If, therefore, such is the case in these instances, and for individual things which are ordained to a single end, it is true of the proposition set forth above.

Now, it is certain that all the human race is ordained to one end, as was already shown; therefore, there should be one regulator or ruler; and he should be called the monarch or emperor. Thus it appears that monarchy, or empire, is necessary for the well-being of the world.

### CHAPTER VI

And even as a part is related to its whole, so partial order is related to total order. A part is related to its whole as to its end and greatest good. From this it follows that the goodness of a partial order does not exceed the goodness of the total order, but *vice versa*. . . . Thus, if the form of this order is found in the parts of the human multitude, it ought all the more to be found in the whole multitude. . . . And thus all the aforementioned parts within kingdoms, and the kingdoms themselves, ought to be ordained to one prince or government: that is, to a monarch or monarchy.

### CHAPTER VII

Further, the society of human beings is a whole in relation to certain parts and a part in relation to a certain whole. For it is a whole in relation to particular kingdoms and peoples . . . and a part in relation

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to the whole universe, as is self-evident. Therefore, even as the members of the society of mankind are well fitted to it, so it itself is said to be well fitted to its whole. Its parts are well fitted to it through one principle alone, as can easily be seen from what has been said above; therefore, it itself is well fitted to the universe, or to the Prince and King of the universe, Who is God, through this same principle alone: namely, the one single prince. From this it follows that monarchy is necessary to the well-being of the world.

### CHAPTER VIII

Also, everything is good—nay, is at its best—when it accords with the intention of the First Agent, Who is God. . . . It is God's intention that all things should represent the divine likeness in so far as their proper natures can receive it. . . . Therefore the human race is well and best disposed when as far as possible it becomes like God. But the human race is nearest the likeness of God when it is most one; for the true principle of unity is in Him alone. . . .

But the human race is most one when all are united in one, which cannot be except when all humanity submits to one prince, as is self-evident. . . .

### CHAPTER X

Wherever there can be dispute there ought to be judgment; for otherwise there would be imperfection without anything to perfect it, which is impossible, since God and nature lack nothing necessary. Between any two princes neither of whom is subject to the other there can be dispute, either by their guilt or by that of their subjects, as is self-evident. Therefore there can be judgment between such princes. And since one has no cognizance of the other, since neither is subject to the other (for an equal has no rule over his equal), there must be a third prince of fuller jurisdiction who can include both in the sphere of his justice. This third may be either a monarch or not. If he is, our proposition is proved; if he is not, he will himself have an equal outside the sphere of his jurisdiction, and in that case a third ruler will again be necessary. And this situation will either go on to infinity, which is impossible; or else it will have to arrive at a first and supreme judge by whose judgment all disputes are, mediately or immediately, concluded; and this will be the monarch or emperor. . . .



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### CHAPTER XI

Further, the world is best disposed when justice is most powerful in it; whence Virgil, wishing to commend that age which seemed to be arising in his time, sang in his *Bucolics*:

‘Now returns the Virgin, the Saturnian realms return.’

For Justice, who was also called Astraea, was called the Virgin. The Saturnian realms meant the best times, which were also called the golden age. Justice is most powerful only under a monarch; therefore, for the best disposition of the world monarchy or empire is necessary.

To prove this, it should be known that justice, considered in itself and in terms of its own nature, is a certain rightness or rule which intrinsically rejects all inequity; and thus considered in the abstract it is, like whiteness, not a matter of degree. . . . But such qualities vary quantitatively in the subjects concerned in proportion as they are more or less alloyed by their contraries. Therefore, where there is a minimal alloy of the contrary of justice, either in the attitude or the action, of the subject, there justice is most powerful. . . .

So far as the attitude of the subject is concerned, the contrary of justice is sometimes found in the will; for even if justice is present, if the will is not free of all cupidity, it is not present in the full radiance of its purity. . . . And, so far as action is concerned, the contrary of justice can be found in capability; for, since justice is a virtue that relates to other persons, how can anyone act in accordance with justice if he lacks the power to assign to each what is his own? Thus it appears that the more powerful the just man is, the more ample will be the operation of his justice.

From this explanation follows the argument that justice is most potent in the world when it resides in a subject most willing and most able to exercise it; that only a monarch is such a subject; and that therefore justice is most potent in the world only when it resides in a monarch. . . .

The first premise is apparent through the preceding explanation; the second must be proved first in regard to the will, secondly in regard to capability. For the first proof it must be noted that the contrary of justice is cupidity. . . . Therefore, where nothing remains to be desired there is no possibility of cupidity; for the passions cannot exist when their objects have been abolished. But a monarch has nothing to desire, for his jurisdiction is bounded only by the ocean, as is not the case with

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other princes, whose principates are bounded by those of others. . . . From which it follows that among mortals the monarch can be the purest subject of justice.

Further, in proportion as cupidity, however slightly, beclouds justice, so charity, or right affection, clarifies and illumines it. Therefore justice can be at its most powerful in him in whom there is the greatest possibility of right affection. Such a person is the monarch; therefore his justice is, or can be, the most potent. . . .

And that there ought to be right affection in a monarch, most of all, appears as follows. Every lovable thing is more beloved in proportion as it is nearer to the lover; men are nearer to a monarch than to other princes; therefore, they ought to be most loved by him. The first premise is manifest, . . . the second is apparent through the fact that men are related to other princes only in part, but to the monarch as a whole. And again: they are related to other princes by way of the monarch and not *vice versa*; and thus the charge of all is primarily and immediately in the monarch, whereas in other princes it exists by way of the monarch, in that their charge is derived from that supreme charge. . . .

### CHAPTER XII

Also, the human race is at its best when it is most free. . . .

. . . . Liberty is the greatest of God's gifts to human nature, since through liberty we are made happy as men here and as gods elsewhere. And, if this is so, who will not agree that the human race is at its best when it is most able to use this principle? But the human race is most free when it is under a monarch. To prove this, we must know that that thing is most free which exists for its own sake and not for the sake of another, as the Philosopher says in his *Metaphysics*. For that which exists for the sake of something else is necessitated by that for whose sake it exists: as a path is necessitated by its goal. If the human race is under a single monarch, it exists for its own sake and not for the sake of another; for only then are the perverse polities—democracies, oligarchies, and tyrannies, which force the human race into servitude—kept under control, as is apparent to one who surveys them all, and then kings will govern, and aristocracies who are also called optimates, and peoples zealous of liberty. Because, since a monarch, as we have already shown, most loves mankind, he desires all men to

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become good, which cannot be the case in a perverse polity. . . . Therefore the human race is at its best when under a monarchy; whence it follows that monarchy is necessary for the well-being of the world.

### CHAPTER XIV

Also, what can be done by one is better done by one than by many. This can be proved as follows: let there be one thing, A, by which something can be done, and let there be several, A and B, by which the same thing can also be done. If, therefore, the same thing as is done by A and B can be done by A alone, then B is superfluous. . . . And since everything that is superfluous is repugnant to God and nature, and since what is repugnant to God and nature is obviously bad, it follows not only that what can be done by one is better done by one than by many but also that to be done by one is good, to be done by many absolutely bad. . . . But the human race can be ruled by one supreme prince, the monarch.

. . . . When we say that the human race can be ruled by one supreme prince, this should not be understood to mean that the minutest decisions of every municipality can proceed immediately from the prince. . . . For nations, kingdoms, and cities have their own peculiar conditions, which must be regulated by different laws. . . . Obviously the Scythians, who live beyond the seventh clime and, suffering great inequality of days and nights, are oppressed by an almost intolerable degree of cold, should be regulated otherwise than the Garamantes, who, dwelling under the equinox where the light of day is almost equal to the shades of night, cannot endure the superfluity of clothing because of the heat of the air. But it should be understood to mean that mankind is ruled by one man in respect of its common affairs which concern everyone, and by a common rule is governed to peace. And this rule, or law, particular princes ought to receive from him, even as the practical intellect receives the major premise for a practical conclusion from the speculative intellect, and adds to it the minor premise which is properly its own, and draws a particular conclusion for the practical affair. And not only is this possible for one man, but it necessarily must proceed from one man in order to abolish all confusion about universal principles. And that this was done by him, Moses wrote in his law [Deuteronomy 1: 13-17]; for he, having taken elders

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of the tribes of the sons of Israel, left inferior judgments to them, reserving to himself alone the higher and more common judgments; and these more common judgments the leaders used throughout their tribes according as was suitable in each case.

Therefore it is better that the human race be ruled by one than by many, . . . and, if better, more acceptable to God, since God always wills what is better. And since the better of two alternatives is also the best, it follows that to be ruled by one rather than several is not only more acceptable to God, but most acceptable. Whence it follows that the human race is at its best when it is ruled by one; and thus monarchy is necessary for the well-being of the world.

### CHAPTER XV

. . . . In every genus of things, the best is that which is most one, as the Philosopher sets forth in his writings *On Simple Being*. Whence it follows that unity is the root of goodness and multiplicity the root of evil. . . .

It is clear, therefore, that everything that is good is good through subsisting in unity. And since concord is good in itself, it is manifest that it subsists in some unity as its proper root. And this root becomes apparent when the nature or character of concord is considered. For concord is a uniform movement of several wills; in this definition it is indeed apparent that unity of wills, which is implied in uniform movement, is the root of concord or concord itself. For even as, if they did this voluntarily, we should call several lumps of earth concordant because they all fall to the centre, and we should call several flames concordant because they all ascend to the circumference, even so we call several men concordant when they are moved simultaneously in accordance with a will toward one end, an end which is formally present in their wills in the same way as one quality, gravity, is formally present in the lumps of earth and one quality, levity, in the flames. For the volitional faculty is a kind of potency and the species of apprehended good is its form; and this form, indeed, like other forms, being one is multiplied in itself according to the multiplicity of the recipient matter: like soul, and number, and other forms subject to composition.

On these premises we may argue as follows in order to prove the foregoing proposition. All concord depends on the unity which exists



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in the wills; mankind at its best is a kind of concord. For as one man, at his best, is a kind of concord, both physically and spiritually; and likewise a household, a city, or a kingdom; so it is with the whole human race. Therefore mankind at its best depends upon unity among wills. But this unity cannot exist unless some one will is the mistress and regulator of all the others to unity, since the wills of mortals, on account of the sweet delights of adolescence, need a director, as the Philosopher teaches in the last book of the *Nicomachean Ethics* [bk. 10, ch. 9]. Nor can that one will exist unless there is one prince over all, whose will can be the mistress and regulator of all the others. If all the conclusions above are true, as they are, it is necessary in order that the world be at its best that there be a monarch of the world; and, in consequence, monarchy is necessary for the well-being of the world.

### William of Occam

[The following translation is taken from the *Dialogus* (ed. Goldast, *Monarchia* . . .), pt. 3, tr. 2, bk. 1, chs. 5-10. It forms part of a comprehensive discussion of the nature and rights of the empire, written sometime between 1338 and 1341.]

#### CHAPTER V

TEACHER: There is another opinion, that it is expedient that the governments and lordships of mortals be varied in accordance with the different characteristics and needs of different periods, so that sometimes it is expedient that one secular or ecclesiastical prince be over all mortals, sometimes it is expedient that several secular or ecclesiastical princes together govern others, but sometimes it is useful that several princes having no superior preside over diverse parts of the world.

PUPIL: Will you try to support that assertion with some arguments?

TEACHER: It seems that that assertion can be supported in several ways. For, as laws ought to be instituted for the common utility ([*Decretum*], c. 2, di. 4), so princes, rulers, and lords, both secular and ecclesiastic, are to be set over others for the common utility, which they are bound to further in preference to their own. For if they prefer their own to the common utility, they are to be considered not rulers or princes or lords but rather tyrants. Now the common utility

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seems sometimes to be better secured through one prince, secular or ecclesiastical, who dominates all, rather than through several princes having no superior, whether they rule jointly or are located in separate provinces, since the multitude of mortals would sometimes rather accept the lordship of one secular or ecclesiastical prince than that of many; sometimes, however, the great multitude of mortals will by no means accept the lordship of one man but voluntarily subjects itself to the lordship of many, whether they rule jointly or have the care of separate provinces, and consequently under such circumstances the common utility would be better procured through several rulers than through one alone. Therefore, in accordance with the varied needs of various times it is expedient that one man or several men rule over mortals. . . .

### CHAPTER VI

PUPIL: . . . . I wish to know how those who hold this opinion attempt to answer the arguments alleged in support of other opinions, in so far as they are or seem contrary to this one. Therefore let us discuss the first argument on behalf of the first opinion, which is this: that if one secular prince dominated all provinces, the wicked would be more securely curbed and the good would live more quietly. Tell me, therefore, how this argument is answered.

TEACHER: It is answered that, although it regularly and more frequently happens that the evil are more strictly coerced and the good live more quietly among the wicked when one secular prince dominates all, yet this fails in some special cases.

PUPIL: Explain to me, therefore, some cases (but only a few) in which they say that this fails. . . .

TEACHER: One case is . . . that in which some multitude, of those who because of wickedness refuse to obey one man, is so great and strong that it presumes to stir up seditious and perilous wars against the monarch of the world, to the notable exhaustion of the commonwealth and of the good, from which wars it would desist if diverse secular princes having no superior governed diverse provinces of the world. . . . Another case is that in which the prince of the whole world rages with tyrannical cruelty through his temporal power against the good men who love the commonwealth, and promotes the wicked, favouring and helping them in his tyranny, as did many

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tyrants of whom we can read in the histories. . . . In these two cases, therefore, the evil would grow insolent under one monarch, prince of the world, and the good would be extremely troubled. Therefore if the world was subject neither in law nor in fact to one secular prince, and if there was reason to fear that the appointment of someone to the monarchy of the world or the ill-will aroused by that appointment would lead to the growing insolence of the wicked and the trouble of the good, then nobody should be appointed to the lordship of the whole world at that time.

PUPIL: The explanation you have just given helps me to understand this argument better, and to recognize that all cases in which they claim that the wicked may grow insolent and the good be troubled under one monarch of all the world can be reduced to the two aforesaid types or cases. . . . But I want to know whether they think that after someone has been, legally, lord of the whole world, someone else should be raised by election or succession to the imperial dignity or majesty regardless of the ill-will of any multitude who are unwilling to obey one man and regardless of the probability that among those eligible to the empire of the world there would be no one both willing and able to use such a dignity justly and lawfully. . . .

TEACHER: Some of them say that in the aforesaid cases the appointment of someone to the empire of the world ought to vary, since nothing which is to the detriment of the commonwealth ought to be done, especially if it is based on human ordination and not on divine law or the law of nature; because what was established for the sake of concord ought not to tend to harm. . . .

PUPIL: I understand how they claim that the wicked could become more insolent and the good be more troubled under one prince of all than under many; therefore tell me the answers to the proofs which are adduced to the contrary.

TEACHER: To the first, which consists in the statement that if one man were prince and lord of the whole body of living men, he would be stronger to curb the wicked and protect the good, the answer is that sometimes a man is lord of the whole world in law and not in fact, since there are many rebels; therefore it can happen that the lord and prince of the whole world has less power to coerce the wicked and protect the good than many princes against whom none or not so many attempt rebellion. . . .

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### CHAPTER VIII

PUPIL: Tell me how, in their opinion, it can be maintained that it is not always expedient for one secular ruler to be over the whole body of mortals, regardless of the fact that even as spirituals are administered by clerics so temporals are administered by laymen, from which fact the second argument . . . attempts to show that even as one ecclesiastical prince is over all others in spirituals so it is expedient that one temporal prince preside over all in temporals.

TEACHER: To this there are two answers: one, that there is a difference between presiding in spirituals and presiding in temporals, because the presidency of one man over all believers in spirituals . . . is based immediately on a special divine ordination, not on human ordination. . . . But the presidency of one secular prince over the whole world in temporals is based on human ordination, which, since it is not a matter of divine law or natural law, can licitly be changed by men, because anything can be abolished by the same cause as gave it birth (*Decretals*, bk. 5, tit. 41, ch. 1). Therefore, before one secular prince presided over all mortals, those who so wished, for a just and rational cause, could licitly have refused their consent to the appointment of some one man to the empire of the whole world, because the consent of all is required for any action which detracts from the liberty or power or right of any men ([*Decretum*], c. 1, di. 54). Likewise, if for any reason the appointment of one prince to the monarchy of the world would result in harm to the common good, no one ought at that time to be promoted to empire. It can otherwise be said that, although Christ ordained that all the faithful ought to be under one chief pontiff, yet, because that ordination of Christ was affirmative and not negative, it binds men for all time but not at all times, and thus it is not necessary that all the faithful obey one pope all the time, since this is not possible, because the see is often necessarily vacant. And although all believers ought to be always ready to obey a supreme pontiff at the right time and place and in the right way, yet when the see is vacant the election of a supreme pontiff can be postponed for a rational and manifest cause, for not only a short but also a long time: so that, even as for a rational and manifest cause his election can be delayed for several days, sometimes for several months, sometimes for several years (whence at one time the see was vacant for six years), so for a licit cause the election can be postponed for a hundred years or two hundred or



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more; and the same thing can be said of appointment to the empire of the world. . . .

### CHAPTER IX

PUPIL: Tell me how it is regularly, though not in every case, expedient that all mortals be under one secular prince, regardless of the fact that it is expedient for every partial kingdom to have one king; since the same judgment should be made of the whole and of the part, even as the same judgment should be made of great and small things: on which considerations the third argument is founded. . . .

TEACHER: There are two answers. One is that the same judgment should not always be made of the whole and of the part, even as there is not always the same law for large and small things, because it often happens that considerations of size involve a diversity of right. . . .

### CHAPTER X

PUPIL: An elaborate treatment of the rest of the arguments adduced for the first opinion . . . would perhaps disgust the readers; therefore if a single answer can be given to them I should be glad to hear it.

TEACHER: Some people think that they can be dissolved by one reason, since they all show that as a rule it would be expedient for the whole world to be under one secular prince but prove nothing in regard to the exceptional cases in which this rule fails.

PUPIL: That answer seems to me to be too general; therefore it will not appear reasonable unless it is applied to each argument separately; therefore try to apply it briefly to all the other arguments. . . .

TEACHER: The eleventh argument is that if it is not always expedient that one emperor dominate all mortals, this would be against natural right or against positive right. It is answered that since natural right is the same as a natural precept, as can be inferred from the Gloss on [*Decretum*], c. 7, di. 1, there are two kinds of natural right as there are two kinds of natural precepts. Now one kind of natural precept is absolute, without any condition, modification, or qualification: for instance, 'Thou shalt not worship a strange God,' 'Thou shalt not commit adultery,' and so forth. But another kind is not absolute, but involves some condition, modification, or specification or clarification: for instance, '[it is wrong] to use the goods of another against the will of the lord,' 'if thou art in extreme necessity, cut off one of thy members

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to preserve the health of the body,' and the like. So natural right is double: some is absolute, and some is conditional and qualified, etc. The rule of one emperor over all mortals cannot be contrary to natural right in the first sense, because then an emperor could never under any circumstances rule over all mortals; but the rule of one emperor over all mortals can be contrary to natural right in the second sense, because natural reason dictates that one emperor ought not to have lordship over all mortals when this lordship would tend to the harm and damage of the commonwealth and of the common good. Thus lordship of this sort would regularly be just and expedient and consonant to reason and to natural right, but under some circumstances it may be unfair and contrary to natural right in the second sense.

### Lupold of Bebenburg

[Lupold's historical interpretation of the significance of the 'transfer of the empire' is one of the most important and most original parts of his *De Juribus Regni et Imperii Romani* (1340). It should be read in conjunction with his conclusions on the effect of the imperial election, translated above, pp. 310-312. The chapter below is translated from the text in Schard, *De Jurisdictione*. . . , pp. 328-409.]

#### CHAPTER IV

In regard to the aforesaid transfer of the empire I ask two questions. . . . The first question is: What is or may have been the effect of that transfer of the empire? For it seems that such a transfer may have had no real effect. For in the time of the emperor Justin II, the patrician Narses . . . introduced into Italy the Lombards, who at length subdued it to their power; from that time, moreover, the Romans began to be ruled by the patricians, and thus the Italian realm was freed from the yoke of the empire of Constantinople. Also, at the same time, other western realms, as the *Chronicles* of Godfrey tell, seceded from the said empire. Accordingly, since Charlemagne lived many years after the time of the said Justin, it appears that he did not at all recognize the emperor at Constantinople as his superior. Thus it seems that the transfer had no real effect in regard to the exemption of Charles himself from subjection and obedience to the emperor at Constantinople. Moreover, before the so-called transfer, Charlemagne himself, . . .

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partly through paternal succession and partly through legitimate war, already had all the kingdoms and provinces which the kings or emperors of the Romans have today. He also had western Gaul, Gascony, Pannonia, and several other provinces and lands which the kings or emperors do not now possess. Likewise, in all these kingdoms, provinces, and lands, he had imperial power, at least by custom. . . . And thus these kingdoms and provinces and lands, and plenitude of power in them, could scarcely be transferred to him through the Roman church. For what is mine by one cause cannot later be made mine by another cause unless it has ceased to be mine. . . . Therefore, since the kings or emperors of the Romans have the kingdoms, provinces, and lands that are still under the kingdom or empire by every right by which Charlemagne himself had them, succeeding through election by the prince electors to the place of Charlemagne himself . . . it seems that the transfer has and had no real effect. Again, this argument is supported by what we read in the *Chronicles* of Eusebius and the *History of the Franks*: that Charlemagne had affirmed that, if he had known that Pope Leo III was planning to confer the imperial coronation upon him, he would not have entered the church that day, even though it was the most holy natal day of our Lord. Now it is not likely that Charles would have shrunk from the assumption of the imperial name or power if any utility or real effect would have accrued thereby, or might have accrued, to him or to the kingdom of the Franks. . . .

Yet . . . I believe that it should be said that, in spite of the foregoing arguments, the said transfer had and has a twofold effect. . . . The first effect is that through this transfer it was declared that Charlemagne and his successors would not thenceforward be bound to any subjection to the emperor of the Greeks at Constantinople: to which subjection all the kings of the whole world, unless they show themselves to have been exempted, are bound. . . . The second effect of the said transfer is that Charles and his successors received thereby imperial power in all realms and kingdoms and lands, especially in the west, which were not under Charlemagne's power before the time of the transfer; and they also received the right, which they did not previously have, to seek and exact from the kings and princes of such kingdoms, provinces, and lands the subjection due to an emperor; so that, even as the Roman people once transferred to the emperor their right and imperial power . . . so also, at the time of the said transfer, this right and power

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was transferred from the Greek emperors to Charlemagne and his successors in the kingdom and empire. Therefore, although the said transfer had no real effect in regard to the kingdoms and provinces and lands which Charlemagne had before the time of the transfer, nor in regard to his omnipotence in them, since, as was said above, he already had full power, yet this transfer had the effects we have described in regard to other kingdoms, provinces, and lands, and in regard to the declaration thereby made, that Charlemagne himself and his successors in empire were not bound to any subjection to the Greek emperors. Moreover, in answer to the last argument concerning Charlemagne, based on the chronicles and histories cited, it can be said that, although Charles knew, by his assumption of the imperial title and power after the said coronation, that the imperial power in all the lands and provinces of the Roman empire, and consequently the power to subjugate them to himself, had been transferred to him, nevertheless, since on account of his age and the innumerable tasks which he had undertaken in expanding the kingdom of France he may have thought himself inadequate to this, he feared to assume this name and power; in fact, this is proved by the sequel, for I do not remember to have read that after the assumption and coronation aforesaid Charles subdued to himself any new land or province.

### Aeneas Sylvius

[In chapters 10-13 of his *De Ortu et Auctoritate Romani Imperii* (1445); text in Schard, *De Jurisdictione . . .*, pp. 314-328, Aeneas Sylvius, who was at that time attached to the emperor, asserted the *de jure* indestructibility of the Roman empire.]

CHAPTER X. *That all people and powers are by right under the Roman emperor in temporals and seculars as under the Pontifex Maximus in spirituals*

For even as in spirituals individual patriarchs and primates and other pontiffs and prelates are subject to the Roman pontiff. . . , it is also clear that all temporal powers are subject to the Roman prince. For since the authority of the canons says that the emperor excels in temporals those who receive temporals from him, who does not see that all peoples and princes receive temporals from the emperor, who is lord of the world, and owe obedience to him for them? For, as



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Augustine says, 'it is by human law that one says, "This villa is mine, this is my slave, this is my home"; moreover, human laws are the laws of emperors.' Thence, as we have repeated from the beginning, since natural reason itself shows that there must be one prince to settle lawsuits, to administer justice, to guard the peoples in peace, and to preside over all temporal affairs, it is manifest that the dignity of this office belongs to the Roman king, who has long been established in possession of it. Although, indeed, some refuse to obey the Roman empire, yet no one, after the monarchy of Augustus Octavian, was so insane as to dare to call himself lord of the earth and prince of the world under any other title than that of 'Roman king.'

CHAPTER XI. *That they err who claim that they are exempt from all obligation to the emperor*

For the rest, let us consider the opinion of those who assert that they have so much liberty that they are not at all bound to the empire and claim to have a certain exemption, although their insolence should be met rather by arms than by laws, that they might know that they are subject by the same right by which they think themselves exempt; yet I should like to write something on this subject. Those who deny that they are under the yoke of the empire assert that they have received this exemption either through a privilege or through some virtue. Now a privilege is received either from the beneficence of the empire or from elsewhere; there is no need to refute the second alternative. For since the Roman empire has been elevated so high above all mortals in temporals, it is manifest that there exists no one who can prejudice it. For all things are null and void that are done by one who lacks authority, nor is anything valid that injures another's right. But if this exemption flowed from the empire, we say that it has no weight in this case. For although the authority of the Roman prince is the greatest and broadest authority, yet Augustus is limited in this way: he cannot create his own equal. And that is what he would be doing if he made anyone free and exempt from himself in all respects. For in the course of time he would grow so weak that he would find the other to be not only equal to himself, but even greater. No one can deny that this would be absurd. For the Roman prince received the title of Augustus in this sense: that he should not diminish but augment the power of the empire. Nor is his authority less because he cannot

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create his equal, even as God does not fall short of omnipotence though He only could be unique in deity.

CHAPTER XII. *That monarchy alone is the cause of universal peace, and that monarchy should preserve it*

Further, since . . . it is certain that the empire was founded by virtue of natural law—since monarchy is necessary to the maintenance of peace and the distribution of justice—it is certain that such privileges, asserting a multitude of supreme powers, are invalid. For discords arise therefrom, rapine is frequent, murders of many sorts and without number are committed, because, when peace is disturbed, wars threaten on every side, since there is no one who, being greater than all in the order of right, can set a term to disputes. But if we should live under one head, if we should all follow one obedience, if we should recognize only one supreme prince in temporals, excellent peace would flourish everywhere on earth, and we should all enjoy sweet concord. Of this there is a manifest sign: that from the beginning of the newborn world up to this age, as we read, there never was universal peace except when the whole world lifted its eyes to the one Caesar Augustus, as to the celestial kingship. And although this then occurred for reverence to Christ the Redeemer Who put on our human form, yet it should be sufficient that the divine Maker of the world had shown this way of having peace, when the world was ruled under one prince. It is clear, therefore, that privileges which prevent monarchic government have no force, no matter what power may have granted them, and that they ought to be annulled, not merely by a successor but by the very person who granted them; for it is not right that a prince should tolerate such things as tend to the subversion of the empire.

CHAPTER XIII. *That they also err who say that they have earned exemption from the empire by their own virtues*

But some say that by their own virtues they have earned that privilege, even without the intervening authority of the emperor. For they say that they had conquered, by their own arms and by their own blood, the provinces which were occupied by barbarians or by enemies of the Christian name and which did not recognize the Roman empire. How ridiculous, unjust, and incongruous this is can be understood from the above discussion. Besides, if this is proper, it will not be

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improper that, when anyone seizes anything unjustly, someone else may take it by force and keep it for himself and not return it to the true lord—but no one claims that this is just. For it is certain that all provinces . . . were once under the empire, and that the direct lordship of these continually remained in the Roman prince. Therefore, although barbarians came upon them and invaded them by force, if they were afterwards recovered they ought not to be given to the conqueror as to a ruler exempt from higher lordship; he should be praised and rewarded, but the provinces should be restored to the empire. For there is no praise and no virtue so great that for its sake the empire ought to be dethroned. For public utility is always superior to private utility; nor ought it to happen (as we have just proved) that any power like the empire be erected on account of anyone's merits, and exempt rulers who would admit no superior would be such powers. This situation tears the sinews of the dignity of monarchy, makes schism under the empire, and shatters all the concord of human society.

## Chapter Eight

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### REGNUM AND SACERDOTIUM

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THE relation between kingship and priesthood was the dominant problem of medieval political thought. The political speculation of the Middle Ages was not, of course, entirely focused on this one continuing and complex issue: there were other practical problems on which the grave tides of medieval opinion broke into agitated debate; there were eddies of active if not immediately practical argument where two streams of tradition met. As we have seen, there was scarcely any topic among the permanent problems of political philosophy which was not to some extent a theme of medieval discussion. But those who write the history of medieval political thought in terms of the conflict between secular and spiritual authority do not greatly distort the historical picture. Of all conflicts, this was by far the most enduring and the most comprehensive; its practical stakes were enormous and its theoretical complexities elaborate.<sup>1</sup>

It was essentially a question of the mutual adjustment of the authority of two sets of offices serving two sets of human purposes. It appeared as a problem because of the appearance of empirical conflicts between these offices, but it appeared to medieval minds as a problem capable of rational solution because they regarded such conflicts as occurring within a single society destined by God to be harmonious. It was fundamentally not a problem of state *versus* church, as modern language too glibly puts it, but of rifts within the single *respublica Christiana*.<sup>2</sup> Certainly in its first emergence it is best spoken of as a conflict between *regnum* and *sacerdotium*—between kingship and priesthood; and though



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later corporate conceptions tended to round out the *regnum* into a state, the *sacerdotium* into a church, yet medieval thought never came to conceive them as two completely separate societies, or detached them from the matrix of that one commonwealth of believers whose different purposes they differently served.

The medieval question has some analogy to the question, raised particularly by modern pluralists, of the relations among the multiple associational forms of modern life; but the analogy is imperfect. The basis of the problem for medieval minds was not the prolific human individual, entering with his fellows into a variety of free-will associations, sharing his loyalty and interest among them in proportions determined only by himself. It was rather founded on the divine plan in which all human needs and purposes were rooted; thus, however secular and spiritual authorities might in practice conflict, the principles of order and harmony that might control such conflicts must be believed to have objective existence, needing only to be found. This guarantee of an ultimate unity in the divine plan had varying effects. On the one hand, it encouraged one group of thinkers to hope that a solution could be found through harmonious coordination and precise articulation of spheres of authority without the institutional subordination of one to the other. On the other hand, the very assumption that an underlying unity existed led others to the conviction that that unity ought to be expressed and made effective in institutional organization flowing from a single apex of authority; and they could hold that conviction without fear of despotism because of their belief that such organization would be guided and controlled by the rational order of the divine plan. Thus for both sides the question seemed to be that of the institutional means through which a proper distribution of functions to secure both specialization and coordination might be achieved. The best modern analogy is the question of the proper relations among the specialized parts of a single governmental system.

The medieval problem was partly shaped by its historic origins. The church grew up inside a state. The Christian emperors, heirs of the emperor-gods of pagan Rome, not unnaturally regarded themselves as still, at least, supreme pontiffs with a general authority over an institution whose organization, policies, and doctrines profoundly affected the political stability of the empire; and the prelates of those early centuries were often only too glad to encourage imperial intervention

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in ecclesiastical affairs so long as that intervention supported their own convictions and interests. Their first ambition went no further than the assertion that the souls of emperors like those of all believing Christians were subject to ecclesiastical discipline. 'The emperor is within the church, not above it.'<sup>3</sup> Yet as the church developed it moved on to assert its claim to autonomy in matters of faith and in the discipline of its own officers. When Gelasius I in the fifth century outlined the spheres of the 'two powers by which principally this world is ruled' and asserted that the obedience of priests to kings in matters pertaining to 'the order of public discipline' should be balanced by a corresponding deference of secular powers to the independent authority of pontiffs in matters of religion, he was making a bold claim for the period.<sup>4</sup>

So long as the Roman empire endured, the path to caesaropapism, as illustrated by the ultimate development of the eastern church, remained open. But the disappearance of the western empire closed this path in the west, leaving behind only a legacy of phrases and precedents to support the more modest and occasional ambitions of medieval kings. In the era that followed even the rough division of function blocked out by Gelasius became blurred. He had spoken of kingship and priesthood as dividing authority in 'the world'; with the disappearance of the empire and the extension of Christianity, 'the world' became synonymous with Christendom: priests and kings could be construed as two powers within the single community of the church. In an often-quoted passage, Isidore of Seville spoke of secular princes as holding 'heights of power within the church,' to reenforce priestly teaching by the power of the sword.<sup>5</sup> Again a division of function was assumed, but without emphasis on a division of spheres of authority; instead the emphasis was on an active cooperation in which kings and priests shared the common purpose of man's salvation but served it in different ways.

The consecration of kings expressed and reenforced the notion that there was something sacred about the royal office, even while it laid an undesigned foundation for the later theory that the royal power was derived from the priestly. The idea that the king was himself a kind of priest became current. Ecclesiastical thought in general stressed the duty of the king to protect the interests of the church and to enforce its faith and discipline; and in the practical exigencies of the early medieval situation, the fact that such protection often took

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the form of direct intervention in the affairs of the hierarchy itself met no theoretical objection. Pious churchmen, not yet sensitive to the problem of jurisdiction, could only welcome the Carolingian era of reform, even though that reform was determined and enforced by the emperor. In the same way, the reforms of tenth century emperors, which included an active part in the election and deposition of popes, seemed preferable to the alternative debasing of the church through the involvement of the papacy in Roman municipal politics. Thus precedents were laid for the idea that kings, and especially the emperor, had the right and duty of intervention in ecclesiastical affairs when the church needed it. The very document which, by setting up the college of cardinals, attempted to free papal elections from corrupting secular influences made a vague allusion to the rights of the emperor.<sup>6</sup>

Even as kings had become involved in the developing constitution of the church, so the higher clergy had become a part of the developing structure of secular government. As the lords of great fiefs, bishops and abbots represented concentrations of feudal power which no ruler could afford to ignore; they also formed the class from which early medieval rulers tended to draw their most valuable councillors and administrators. The emperors—and other kings—were thus inevitably interested in how vacant bishoprics were filled. In principle this was a matter of election by 'the clergy and people' of the diocese, but the right of the ruler to approve candidates had been recognized by sixth-century church councils,<sup>7</sup> and the practice of royal investiture of the newly-elected bishop with the symbols of his twofold authority easily turned into the practice of making nominations that reduced canonical election to a mere formality. It followed, of course, that many bishops were more secular-minded than was appropriate to their role in the church and also that simony, or the buying of ecclesiastical office, became a commonplace scandal.

Against the secularization of the clergy there were several waves of reform,<sup>8</sup> which finally culminated in the programme of Gregory VII. The reform party had at first no idea of abolishing the system of lay investiture but intended only to modify and restrict it. Gregory's decree of 1075, prohibiting all lay investiture, was thus a radical step. More clearly than any of his contemporaries, Gregory saw that in order to fulfil its spiritual mission the church must have control of its own officers. But the time-honoured control over the bishoprics was equally

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essential to the emperor. Thus Henry IV refused to accept Gregory's decree and attempted to counterattack by securing the deposition of Gregory as having overstepped his proper functions. To this Gregory responded by deposing and excommunicating Henry. This unprecedented move opened a second issue: whether the church had the right to seek her own purposes and her own autonomy through what was in effect an attack on the autonomy of temporal rule. This issue produced a sudden and voluminous outburst of pamphlets.<sup>9</sup> In the statements of Gregory and Henry and their supporters the question of the relations of *regnum* and *sacerdotium* became for the first time the subject of explicit and eager analysis.

Gregory did not claim that the church had any authority over the empire as such. He accepted the Gelasian theory of the mutual independence of two coordinate powers. His originality consisted in the extreme practical conclusions that he drew from premises already familiar and generally unquestioned. He began with a consciousness of his own power and responsibility as head of the spiritual order and as heir of all the spiritual authority entrusted by Christ to Peter for the welfare of the human souls of which he was the shepherd. He based his deposition of Henry specifically on the spiritual power to bind and loose<sup>10</sup>; as judge in the court of conscience the pope could absolve men from the binding effect of a bad oath. He argued elsewhere<sup>11</sup> that there was no reason why kings should be exempt from papal power: 'Are they not among the sheep which the Son of God entrusted to the blessed Peter?' Early precedents and quotations from Scripture and the Fathers supported his claim that rulers as Christians were subject to the jurisdiction of the church. Moreover, he argued, since kingship had originated in human pride inspired by the devil, it could scarcely claim such dignity as would raise it above priestly jurisdiction. This was a careless argument, inconsistent with his calmer opinion that, whatever its historical origins, kingship derived its authority from God.<sup>12</sup> Aside from such impetuous and casual polemics, his main line of argument stressed the admittedly greater dignity and importance of the spiritual compared to the secular power and found in the spiritual power itself a potentially illimitable authority to do anything whatever that was necessary for the fulfilment of its ends. Contemplating the tremendous language in which the power of the keys was given, one might, indeed, be unable to respect any claim to exemption from it;



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and the heart of Gregory's position on the deposition of the emperor may be summed up in the quotation he borrowed from St. Paul: 'Do you not know, because we shall judge angels, how much more secular things!'<sup>13</sup>

Though there was nothing revolutionary in Gregory's premises, his application of them shocked the imperialists. Like Gregory, they began with an assertion of the Gelasian principle; but they refused to accept Gregory's claim that the excommunication and deposition of a ruler could be construed as incidents of a purely spiritual authority. However spiritual his purpose and his methods, their effect was undoubtedly exerted within the temporal sphere. Thus they accused Gregory of trying to extend his control to an area which had been entrusted by God to royal authority. Some writers went on to deduce that Gregory was an unworthy pope and that the emperor properly used his authority to protect the church by the temporal sword in attempting to secure the deposition of Gregory. For this a series of respectable precedents could be cited, though these in turn could be attacked by the papal party as inconsistent with the Gelasian principle. Whether or not the imperialists defended Henry's counterattack on Gregory, they were emphatic in asserting that his position as emperor could not be subject to papal determination. Here they showed themselves more capable than was Gregory of theoretical abstraction. Gregory had treated Henry simply as a man, subject to the jurisdiction which the church had over all souls; the imperialists tended to separate the man from the office and to insist that the imperial dignity must be immune from ecclesiastical interference, whatever the merits of the man who occupied it. Some went so far as to argue that the emperor was responsible to God alone for his use of the temporal power. Henry's own answer to the deposition of 1076 denied that he could be deposed for anything short of heresy:

'You have laid hands upon me also who, though unworthy among Christians, am anointed to the kingship, and who, as the tradition of the Holy Fathers teaches, am to be judged by God alone and not to be deposed for any crime, unless I should wander from the faith, which God forbid.'<sup>14</sup>

Such extreme statements were not universal in the imperialist party,

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but the general tendency to stress the special position of the emperor, to emphasize the divine origins of his authority, and to deduce from this that the power of the keys could not extend to deposition was the essence of the imperialist reasoning.

The writings of both sides, based on a common acceptance of the Gelasian formula, tended to focus on the details of the immediate situation and to employ any specific argument—from Scripture or the Fathers, from historical precedent or canon law—which seemed relevant to the immediate debate.<sup>15</sup> Neither side showed any awareness of the real difficulty of the underlying issue—an issue which was finally rooted in the conflict of values developed by human nature itself; to both sides, it seemed essentially a question of jurisdictional areas. Each side assumed that all would be well if the other side kept in its place. Modern commentators have seen a whole system of papal sovereignty implicit in Gregory's position and an implicit caesaropapism in Henry's; but such concepts were far from the minds of the contestants. They did not think of themselves as making systems for the future but as defending specific powers which were part of a system already long established; their eyes were bent on the past.

Among the pamphlets called forth by the controversy a few deserve particular attention. We have already noticed<sup>16</sup> how Hugh of Fleury responded to Gregory's suggestion of the sinful origin of kingship with a vigorous statement of the thesis that the powers that be are ordained of God; how Peter Crassus oddly defended the indefeasibility of the imperial title on the grounds of hereditary proprietary right; how Manegold of Lautenbach, on the papalist side, developed a rudimentary contract theory to justify popular withdrawal of allegiance from an unworthy emperor—according to him, Gregory's deposition of Henry had merely declared an already accomplished fact. In the anonymous *De Unitate Ecclesiae Conservanda*,<sup>17</sup> the theory that governmental authority rested on popular consent was turned against Gregory, and historical precedents were critically analysed to demonstrate that there were no grounds for his claim that popes had deposed kings in the past. Two other writers are significant because they represent novel approaches to the problem of *regnum* and *sacerdotium*, anticipating later developments in theory: Honorius Augustodunensis on the papal side and, on the other, the anonymous English author of the *York Tractates*.

The *Summa Gloria* of Honorius presented for the first time the thesis

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that royal power was derived from God by way of the priesthood. The priesthood was superior in dignity to the kingship, as demonstrated by the relations between such scriptural figures as Abel and Cain, who prefigured the two orders. Old Testament history revealed that the children of Israel from the time of Moses to that of Samuel were governed by priests, and that kingship was originally instituted by priestly action. So Christ, Who was both Priest and King, transmitted the keys to a priest, not to a king, and from the time of Peter to that of Silvester priests governed the church. Then Constantine transferred the imperial crown to Silvester, who in turn entrusted the crown and the temporal sword to Constantine for the defence of the church. Since that time, it had been the custom of the church to establish kings 'for secular judgments,' retaining within itself the jurisdiction over its own officers. Kings were to be venerated and obeyed, but only so long as they fulfilled their functions as 'ministers of the church'; for 'as spiritual things, which justify secular things, are of greater dignity than secular things, so the priesthood is of greater dignity than the kingship, which it establishes and ordains.'<sup>18</sup> In this naive and not always logical argument, the *Summa Gloria* partly anticipated the 'direct power' doctrine which was to dominate curialist circles in the latter thirteenth and fourteenth centuries.

The *York Tractates*, written about 1100, when the papal campaign against lay investiture had involved the Angevin monarchy, developed a thesis which cut at the very roots of the papal claims.<sup>19</sup> Although the author used the Gelasian formula, his analysis in effect upset the Gelasian balance of power in favour of the king. Kings and priests shared the government of the church in this world. The consecration of kings, like that of bishops, conferred a divine character and authority, which were not the gift of those who officiated at the consecration but through their ministry were bestowed directly by God. Since the royal office was sacred, it had claims to reverence and obedience regardless of the merits of the holder. 'The person is evil, but the power is just. Tiberius is wicked, but Caesar is good.'<sup>20</sup> Moreover, the office of the king was higher than the priestly office. The king represented the royal power of Christ as God, as the priest represented the sacerdotal power of Christ as Man; and, as in Christ the royal power was higher than the priestly, so in His church. The king 'disposes the church according to the discipline of the Christian law'; he ruled the souls as well as the bodies of

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men—for it was impossible to separate the two; his authority extended to the institution of bishops, who were properly made subject to him and owed him obedience even when he seemed to be in the wrong; he could summon and preside over church councils. In short, with the author of the *York Tractates* the Gelasian distinction between secular and spiritual affairs tended to disappear, and so far as there remained a distinction between the authority of kings and that of bishops, who 'rule the holy church according to the form of doctrine given it by God Himself,' it would seem to be rather a difference of method and functioning than a contrast between mutually exclusive spheres of authority.

In discussing the priesthood, the author of the *York Tractates* emphasized its spiritual mission rather than its spiritual authority. He asserted the equality of all bishops, explaining the primacy of the Roman see as the result of historical accident. The Bishop of Rome, he argued, had claims to obedience only in so far as he fulfilled his apostolic function of teaching the commands of Christ, and not to those who already had 'a fuller knowledge than he,' but to the nations not yet Christian. The Roman church was to be revered only 'in charity,' and not because it was Roman but only in so far as it contained 'a few elect sons of God,' 'for only the elect and sons of God may we truly call the church of Christ.' No reverence was due 'the church of Satan,' 'the many reprobate sons of the devil who are like chaff on the threshing-floor of God covering up the grains of wheat, overwhelming the elect.'<sup>21</sup>

This whole line of thought, implying a private right to judge a priest by his conduct without respect for his office, was of course alien from the main stream of medieval doctrine. It had an obvious kinship, however, with a persistent pattern of medieval heresy, which recurred in the Albigensians, the Waldensians, and the Lollards and finally became a dominant theme in sixteenth-century Protestantism. In some ways, the author of the *York Tractates* foreshadowed Marsiglio, in whose mind the subjection of church to state was also coupled with a denial of the primacy of Rome and a restriction of the priesthood to ministerial and doctrinal functions; but he had none of Marsiglio's cool secularism. His religious temper and his high regard for the mystical character of the king as God's earthly representative were in the tradition that was to lead to Wyclif and to Luther.



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The dispute over lay investiture dragged on into the twelfth century without any conclusive settlement. On the whole, the twelfth century and much of the thirteenth formed a period of transition. No new systematic theory of the relations of ecclesiastical and secular power was formulated till well on in the thirteenth century, but meanwhile a variety of factors were developing the attitudes and the arguments which ultimately became articulate in the legal systems of the canonists and the philosophical systems of the theologians.

Fundamental among these factors was the actual development of ecclesiastical and secular government. Within the church, power became increasingly concentrated in the pope, with the development of judicial, administrative, financial, and diplomatic machinery which supported the ambitions of the Holy See; at the same time, the consolidation of territorial bases for medieval kingdoms and the development of their governmental institutions were producing a new pattern of secular organization. This twofold development inevitably resulted in new disputes, as church and kingdom competed for control in specific areas of authority. The control of the appointment of bishops continued to be an object of perennial dispute, though it no longer centred on the particular incident of investiture; and beside this other issues arose. Most significant of these was the clash between Henry II of England and the archbishop Thomas à Becket on the question of jurisdiction over criminous clergy. Like the investiture struggle, the dispute dramatized a conflict of fundamental principle. If the king was indeed responsible for the maintenance of order and justice in his kingdom, could he allow a whole class of his subjects to be exempt from his jurisdiction? On the other hand, could the church allow its officers to be, as it might seem, tried by alien law in alien courts? The dispute was fought out in practical terms and contributed nothing directly to political theory; but the martyrdom of Thomas à Becket, which horrified all Christendom and resulted in the decisive defeat of Henry's programme, must also have had an indirect effect in stimulating among thoughtful churchmen a deep concern for 'the assertion of justice, the liberty of the church,'<sup>22</sup> for which, as Becket said, he died.

The maturing of regal and ecclesiastical government also began to exert a strain on the old concept of a single theocratic community within which both king and priest were officers. The distinction between clergy and laity became more emphatic. The rights of the church

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appeared more and more clearly as concentrated in the clergy. The clergy began to look like a society distinct from and outside the secular state: a society with its own organization, its own government, its own law, and its own purposes; there was a sense in which the clergy were the church. In the introduction to his *Summa Decreti*, the canonist Stephen of Tournai gave a new twist to the Gelasian formula:

‘In the same City, under the same King, there are two peoples, and for the two peoples there are two ways of life, and for the two ways of life there are two governments, and in accordance with these two governments there is a twofold order of jurisdiction. The City is the Church; the King of the City is Christ; the two peoples are the two orders in the Church, clerics and laymen; the two lives are the spiritual and the carnal; the two governments, the priestly and the regal; the twofold jurisdiction, divine and human law. Render to each its due, and all will be well.’<sup>23</sup>

From this viewpoint the king must appear simply as the head of the secular society pursuing secular ends; and this construction was supported by the actual trend of the expanding business of kingship. On the other hand, the development of the wealth and power of the church, of its courts and governing machinery, meant that the higher clergy devoted a large share of their attention to activities only indirectly related to the cure of souls—to business which, in a king, would properly have been called regal. The net effect of all this was to shift the emphasis in discussions of the powers of *regnum* and *sacerdotium*. Isidore of Seville had contrasted the sword and the word, implying different methods of leadership toward a common goal, through coercion and persuasion; later thought was to find nothing incongruous in the idea that the priesthood itself wielded a coercive sword, though it was not a sword of bloodshed. It was to prefer the imagery of the two swords and to find the heart of the contrast between *regnum* and *sacerdotium* in the different purposes for which their separate swords were used.

The general tendency to form what were, in effect, two states out of the single Christian commonwealth was supported by one of the most important of the intellectual currents of the period: the study of law. Under the stern influence of legal formulation, functions hardened

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into rights, superiority became authority, subordination turned into delegation, and traditional rights that seemed exceptions to general rules were disallowed or else brought into line as cases of concession or prescription. In general, the influence of legal thinking strengthened all tendencies toward the centralization of authority, in the church as in the secular state. It thus helped to raise the question whether all authority exercised on earth might not be traced to a single fountain-head. But before this question became fully articulate, legal studies had produced a quantity of specific material that was to affect men's answers. The *Corpus Juris Civilis* contained a mass of precedents for imperial control of church affairs and for the interpretation of clerical powers as resting on imperial concessions. It suggested a view of imperial authority as ultimately derived from the consent of the people, and as inalienable and indefeasible. These ideas were of greatest immediate use to the ambitious Hohenstaufens, whose struggle for the hegemony of Italy embroiled them with the papacy in the later twelfth and early thirteenth centuries, but their application to other medieval rulers awaited only the development of the idea that 'the king is emperor in his kingdom.' Meanwhile, the canonists were busily developing their own interpretation of imperial power; that development, centring in the idea of an original papal sovereignty over the empire, which was recognized in the Donation of Constantine and later exercised in the papal transfer of the empire to the Germans, was well under way in canonist circles by the middle of the thirteenth century. Moreover, the systematization of the canon law—especially as enriched by the Pseudo-Isidorian Decretals<sup>24</sup> forged in the ninth century—provided the canonists with an arsenal of historical arguments for the claim that early popes had traditionally exercised a range of power over both clergy and laity scarcely less wide than that enjoyed by the emperor of Justinian's code.

The thirteenth-century reception of Aristotle was another major factor toward shaping new theories of the relation of church and state. It provided a philosophy which alone could offset the continuing Augustinian tradition of the sinful origin of human institutions and their unimportance in contrast to the scheme of salvation. The Aristotelian view of the good as the development of the natural potentialities of a species provided a rationale for a new consciousness of secular values and thus came to enlist many theologians in the defence of the secular

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state. On the other hand, Aristotelian ideas of an order based on a hierarchy of ends served to strengthen the arguments of those who hoped to reduce all human relationships to a single unified system of control under papal headship. Besides these specific influences, Aristotelianism provided the theologians, as the *Corpus Juris* had provided the lawyers, with techniques of thought which deepened and broadened political controversy, revealing its relation to fundamental concepts about human destiny and the workings of the universe. This general influence supported and was supported by the maturation of scholastic dialectics.

A fourth important aspect of the developments of the twelfth and thirteenth centuries was a complex transformation in the attitudes with which men regarded secular and spiritual values. In the disorder, danger, and poverty of the early Middle Ages, the view of this earth as primarily evil, a wilderness through which the army of believers struggled toward the Promised Land, may well have gone unchallenged in private thought as well as in open speech. At any rate, the virtual clerical monopoly of education had made this traditional Augustinian view a premise of all formal argument. But this *contemptus mundi* was steadily weakened as the world itself grew more attractive and its affairs became more various and more engrossing. A secular spirit became increasingly articulate, especially among the new class of townsmen and among the lawyers who staffed the expanding royal bureaucracies. Without questioning the Christian faith in the supreme importance of salvation, minds touched by this new spirit found obvious values in natural and temporal things and testified to their discovery in the eagerness with which they pursued worldly goods, in their higher regard for stable and effective government, in new themes of literature and scholarship, and in the emphases and implicit premises of their opinions. From this secular spirit the clergy, of course, were not exempt, especially as the church itself possessed a large share of the riches and power which helped to make the world enjoyable. Thus the worldliness of the clergy became a frequent theme of comment and criticism, and the increasing involvement of the church in secular business drew into a strange alliance the hard-headed men of affairs who resented clerical competition in their own secular interests and the pious souls who were seriously concerned lest the church lose sight of its spiritual mission.

For this period was characterized not only by a growing secularism



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but also by a growing consciousness of the contrast between the avowed and the apparent interests of the clergy, and a tendency to measure their pretensions against standards derived from the Christianity of the New Testament. Increasingly, it was suggested that the church could serve its purpose best through an abnegation of claims to worldly wealth and power. This tendency appeared in an extreme form—but by no means its only form—in the heresies which developed particularly among the simple folk of Lombardy and southern France. In Albigensianism, and in the Waldensianism which succeeded it, the old Manichaean heresy, which interpreted the universe as a struggle between the principles of good and evil, between spirit and matter, was combined with an interpretation of Christianity that called for a literal application of the Scriptures, emphasized poverty and unworldliness as the essence of the Christian life, and found the basis of priesthood in personal saintliness rather than sacred office. These doctrines tended, of course, to a destruction of the whole sacramental and institutional conception of the church; under persecution the heretics moved toward a denial of all authority in church and state. They produced no systematic political theory, but their attitudes were significant both as a symptom of more widespread discontent and as an influence and a challenge for more orthodox minds.

The foundation of the mendicant orders was both a counterattack against heresy and the product of a revival of otherworldliness like that reflected in the heresies themselves. As their first spiritual impetus wore off, however, the mendicant orders in general came to terms with the good things of this world and, with papal cooperation, discovered legal devices which virtually nullified their vows of corporate poverty.<sup>25</sup> One wing of the Franciscans, the so-called Spirituals, continued to maintain the poverty of Christ and the apostles and to deduce that the church had no right to property beyond the claims of mere subsistence; this raised the whole issue of the proper relation between spiritual and temporal lordship as a question for debate within the church. The organization of the mendicants raised another question of broad significance. For, by-passing diocesan authority, Honorius III granted them the right to hear confessions anywhere; the ensuing discussion clarified the idea that the pope, unlike lower prelates, could intervene directly anywhere in the church, and this idea became a necessary foundation for the later claim that the pope could be unlike

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other clergy in having direct power in temporals. Stresses within the church became arguments for centralized authority, as many thoughtful churchmen came to feel that the problem of heresy and the continuing schism with the Greek church demanded the unification of a crusading Christendom under papal headship; thus, as Boniface VIII was to suggest in *Unam Sanctam*, any challenge to the supremacy of the pope was an instance of Manichaeism and an attack upon the unity of the faith.

The full effect of all these influences was not apparent until the end of the thirteenth century, when the quarrel between Boniface VIII and Philip the Fair produced an outburst of controversial writing on the relations of secular and spiritual power like that which had accompanied the investiture struggle, but on a much higher theoretical plane. But even before that time there appeared arguments marking new trends of thought, and particular statements destined to future significance.

Thus one can find among twelfth-century theologians suggestions of a tendency to regard the temporal authority as in some sense derived from and subjected to the spiritual. Phrases of writers of this period were to be quoted by later writers in support of an extreme doctrine of the direct power of the pope over temporal rulers. But since no complete and systematic exposition of the relations between temporal and spiritual authority appeared in this period, one cannot safely assume that such expressions were originally meant to convey the technical meaning that they would have for later minds. Most important of such seminal statements was that of Bernard of Clairvaux, in a passage of a treatise addressed to Eugenius III, arguing that he should meet the disorder of the Roman people with 'the word, not the sword':

'Why should you try again to draw the sword, which you were once ordered to put back into its sheath? And yet anyone who denies that the sword is yours seems to me not sufficiently to consider the word of the Lord when He said, "Put back thy sword into its sheath." Therefore the sword is yours, to be unsheathed, perhaps, when you so indicate (*tuo nutu*), although not by your hand. For if it did not belong to you in any way, the Lord, when the apostles said, "Behold, here are two swords," would have answered not "It is enough," but "It is too much." Therefore both swords, the spiritual and material, belong to the church,

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but the former is to be drawn by the church, the latter on behalf of the church; the former by the hand of the priest, the latter by the hand of the warrior, though, indeed, at the indication of the priest and the order of the emperor.’<sup>26</sup>

The words were to echo and re-echo through later controversies; they were to be repeated almost *verbatim* in *Unam Sanctam*; but how much Bernard meant by them it is hard to say. Did the temporal sword belong to the church in the same sense as the spiritual sword, or was Bernard only restating in emphatic language the time-worn principle that the power of kings existed for the sake of the church and should be used to protect it when the pope desired such protection? In general, Bernard’s thought emphasized both the great power of the pope and the undesirability of his becoming involved in secular affairs. Other passages in the same treatise (‘Your power is in respect to crimes, not possessions’; ‘It is a ministry imposed on you, not a dominion given you’) were to make it a rich storehouse of ammunition for later anti-papal writers.<sup>27</sup>

Similarly, one cannot tell how much Hugh of St. Victor meant by his statement that the priestly power was ‘older’ than the royal power, which it ‘institutes’; that ‘the sacerdotal power consecrates royal power, both sanctifying it through benediction and forming it by institution’; that ‘it judges it if it is not good,’ whereas only God could judge the church.<sup>28</sup> But it is safest to assume that his meaning stopped somewhere short of the theory that the priestly power included direct power in temporals and that the secular ruler was a mere agent of the priest. The same difficulty arises in connection with a famous passage of the *Policraticus* of John of Salisbury, in which the allegory of the sword was combined with the principle of the superiority of spirituals over temporals:

‘This sword, therefore, the prince receives from the hand of the church, although she herself does not have the sword of blood at all. Yet she does have it, but she uses it through the hand of the prince, upon whom she confers the power of coercing bodies while retaining for her own pontiffs authority over spiritual things. Therefore the prince is a minister of the priesthood, and one who performs that part of the sacred offices which seems unworthy of priestly hands.

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For every office of the sacred laws is religious and pious, but that is inferior which deals with the punishing of criminals and seems to resemble that of the executioner.'<sup>29</sup>

This passage has often been cited by modern scholars as the first explicit statement of a doctrine of the direct power of the church over the state. But John of Salisbury was an eclectic thinker, sensitive to all the currents of thought in his time and not always successful in harmonizing them. The idea that the royal office was itself a sacred office of the church reflected the old tradition which we found in Isidore of Seville; the comparison of the king to the executioner was new. If it was meant to detract from the royal dignity, it was certainly not consistent with John's otherwise high concept of the king as 'a certain image of the divine majesty on earth,'<sup>30</sup> responsible for ordering his kingdom in accordance with the divine plan. As some commentators have pointed out, he drew no institutional conclusions from this passage: on the contrary, whenever he came to a critical question of jurisdiction, he 'evaded it silently.'<sup>31</sup> Thus while we must regard it as significant that John was willing to say that the prince had received a coercive jurisdiction from the hand of the church, it is most significant, in relation to his thought as a whole, as illustrating the ambiguity typical of a period in which fundamental political concepts are being slowly transformed.

The theologians of the thirteenth century were in general not touched by the great struggle between papacy and empire. Strangely enough, Aquinas himself must be added to the list of those whose comments on the relation of spiritual and secular authority were fragmentary and inconclusive. He has, indeed, often been claimed by modern commentators as one of the first champions of papal supremacy over the temporal power; but, as Bellarmine observed in the sixteenth century, 'as for St. Thomas, what he thought is not so certain.'<sup>32</sup> Bellarmine classified him with the precursors of his own theory that papal power in temporals could only be casual and indirect, and those modern scholars who have studied his work most carefully tend to come to the same conclusion.<sup>33</sup> Aquinas followed Aristotle wholeheartedly in finding a positive ethical value and a natural basis for the state. He also taught that the natural ends of man, pursued under the control of secular government, were subordinate to his heavenly



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destiny, attainable only through God's grace, of which the church was minister. He accordingly argued that 'those to whom belongs the care of antecedent ends ought to be subject to him to whom the care of the ultimate end belongs, and to be directed by his command.'<sup>34</sup> But this, of course, did not need to imply a normal jurisdictional control of the pope over secular institutions, still less the derivation of the secular authority from the spiritual. On the contrary, Aquinas elsewhere as clearly asserted the normal independence of even heathen states—for 'divine law does not abolish human law, which arises from natural reason'<sup>35</sup>—and this assertion was in harmony with the plan of his entire system, in which 'grace presupposes nature,' and natural ends are real values although subordinate also to supernatural ends. In only one passage, in his early commentary on the *Sentences*,<sup>36</sup> did Aquinas apparently suggest a theory of the direct lordship of the pope in temporals, and even this passage can be interpreted as referring merely to the papal lordship over the papal states or to an indirect and casual power. But even if it is to be taken in its more extreme sense, there is no evidence that it represents Aquinas's settled opinion; unsupported by any other passage in his voluminous writings, it may well have been only a random echo of ideas which, as we have seen, were beginning to gain currency in other minds. Aquinas's virtual silence on what was soon to be the outstanding problem of political thought may be related to the circumstance that his own immediate political environment was one in which the Gelasian division of authority still appeared practicable. That being the case, his optimistic rationalism and his profound piety alike led him to an assurance of the potential harmony of the institutions of man's reason and those of God's grace. No lawyer, he was always more concerned with right than with rights; he did not seek for unity in juristic structures but in the mind of God, Who was the first and final cause of all diversity.

Meanwhile, students of the canon law had outstripped the theologians in the systematic formulation of principles for the relation of the spiritual and temporal powers. In this process we can note two stages: the expansion of the theory of spiritual power on which Gregory VII had acted, best exemplified in the theory and practice of Innocent III, and the succeeding development of the theory of direct papal power in temporals, which is associated particularly with Innocent IV and the decretalists of the later thirteenth century. The general

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process was a spiral: the more cautious assertions of official pronouncements, geared to the possibilities of an immediate situation, were expanded in the law schools by commentators who vied with one another in the speculative extension of papal power; the expanded theory in turn became the background of papal assertions continually more ambitious, though still falling short of the heights conceived by unfettered academic imagination.<sup>37</sup>

The application of this process to the general concept of spiritual power transformed what had been a loose and vague notion into a system of concrete jurisdictional claims which cut deep into areas also claimed by secular authority. It was argued that the pope had original jurisdiction of all cases 'annexed to spirituals': that is, of all cases involving sin (*ratio peccati*), oaths, the sacramental system (including marriage and wills, associated with the sacrament of extreme unction), and the protection of widows and orphans; since justice was a spiritual virtue, he could also intervene in temporals in case of defect of justice. This approach obviously would transfer to ecclesiastical courts a great mass of cases involving title to property and lordship and would give the pope practically illimitable claims to intervention in matters of war and peace, the title of rulers, the vacancy of kingdoms, and so forth. Moreover, analysis of the implications of excommunication theoretically strengthened this papal weapon by making the excommunication of a ruler virtually equivalent to deposition. These claims, of course, were not entirely implemented in practice; but the thirteenth century saw a tremendous expansion of papal influence in the temporal sphere.

The exploration of the implications of spiritual power was particularly the work of Innocent III, who characteristically justified his inroads into secular affairs as incidents of his spiritual jurisdiction. We have already noticed how he transformed his admitted right to scrutinize an emperor-elect before coronation into a right to decide between candidates in a disputed election.<sup>38</sup> In the same spirit, and regardless of the fact that John at that time held England as a papal fief, he founded his annulment of the Great Charter solely upon his ecclesiastical rights.<sup>39</sup> In his claim of jurisdiction over the strife between Philip II of France and John of England, who was Philip's vassal, he specifically disavowed an intention to usurp secular jurisdiction:

'Therefore let no one think that we intend to infringe upon or

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diminish the jurisdiction and authority of the illustrious king of France, since he neither would nor should infringe upon our own jurisdiction and power; and since we cannot exhaust our own jurisdiction, why should we wish to usurp that of another? But . . . since the king of England, as he asserts, is sufficiently prepared to show that the king of France sinned against him . . . how can we, who have been called by supernal disposition to the government of the universal church, fail to heed the divine mandate and proceed according to its forms unless perchance the king of France may show sufficient reason to the contrary to us or to our legate? For we do not intend to judge concerning the fief, which lies in his jurisdiction . . . but to judge concerning the sin, for of this, without doubt, we have judgment which we can and ought to exercise on anyone whomever.

‘For, since we depend on no human enactment but rather on divine law, because our power is not from man but from God, no one of sound mind can deny that it belongs to our office to correct mortal sin of whatever sort, and to coerce through the penalties of the church anyone who refuses to submit to that correction.’<sup>40</sup>

In the decretal *Per venerabilem*,<sup>41</sup> Innocent III refused to legitimate the sons of a French count for secular inheritance, partly on the grounds that the count was subject to the normal jurisdiction of the king of France; he nevertheless incidentally asserted a papal right to exercise jurisdiction on such matters as the legitimation of heirs ‘casually,’ ‘on investigation of specific cases,’ especially if a petitioner, like the king of France in a similar case, was subject to no secular lord. The legitimation of bastards, he maintained, was an instance of a case in which ecclesiastical and civil jurisdiction overlapped, ‘in which, if there is anything difficult or ambiguous, recourse should be had to the judgment of the apostolic see.’ This *obiter dictum* became the classic reference for the whole theory of casual jurisdiction: i.e., an abnormal jurisdiction which would come into play in specific cases, as contrasted to the ‘ordinary’ jurisdiction of a normal superior.

In a sermon on the anniversary of his consecration, Innocent III stated that in his marriage to the Roman church, his bride had bestowed on him ‘a dowry precious without price: namely, plenitude of power in spirituals and latitude of power in temporals.’<sup>42</sup> The combination of latitude in temporals with plenitude in spirituals would seem to

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amount to an illimitable practical jurisdiction without further claim. His own teacher, the canonist Huguccio, had emphatically maintained the Gelasian theory of two coordinate powers<sup>43</sup>; Huguccio's shrewd pupil found no necessity to substitute a different doctrine. Yet one canonist of his period, the Englishman Alanus, had already asserted clearly that both swords belonged to the pope, who was 'the ordinary judge in both spirituals and temporals'<sup>44</sup>; and the powers actually exercised by Innocent III and justified by his decretals formed an important source for the extreme doctrine developed by the canonists of the next generation.

The next, decisive step was taken by Innocent IV, who, in his own decretals and, even more, in his commentary on the *Decretals*, expanded the specific claims of Innocent III and based them on a doctrine of an all-embracing papal overlordship in temporals. The cornerstone of his system was the concept that the pope, as vicar of Christ, had received from Him the 'plenitude of power' which He had had as 'natural Lord'—'since it would be an absurdity if, after the death of Peter, He should leave the human nature created by Him without the government of one person.' The papal power extended over infidels and Jews as well as over Christians. It was 'a monarchy not only pontifical but also regal'; the pope was 'the ordinary judge of all men.'<sup>45</sup> Among the specific powers claimed by Innocent IV were the rights to depose emperors and kings, to appoint an emperor when the electors were negligent, to hear appeals from a secular court in case of defect of justice,<sup>46</sup> and to appoint a guardian for a kingdom whose king was unable to preserve peace and justice. In short, he thought of the pope as the normal 'superior' of all temporal powers, intervening in their affairs only when it was necessary, but basing such intervention directly on his supremacy in temporals rather than on the implications of spiritual power. In regard to the empire, as we have already seen,<sup>47</sup> he claimed a peculiarly intimate control; but the rights that he claimed over other kingdoms were in principle no less complete.

Succeeding canonists, particularly Hostiensis and William Durand, similarly based their thought on the plenitude of papal power and worked out in detail a series of legal principles which made it clear that all secular power was derived from God through the pope, was exercised subject to his judgment, and could be reclaimed by him at



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his discretion. The language in which William Durand described the pope reached heights of emphasis previously unknown:

‘He is the successor of Peter and the vicar of Jesus Christ, governing on earth not as mere man but as representing God Himself, whence he rules all things and disposes all things and judges all things as he pleases. . . . Moreover, the pope has the plenitude of the power to which he has been called . . . and so long as he does not oppose the faith, he can in all things and through all things do and say anything he pleases; he can deprive whomever he will of his right; because there is no one who can say to him, why do you do this? For his will is reason enough, and what pleases him has the force of law. He can also take away every right, and lawfully dispense from law. . . . Again, he has no superior . . . but he himself is over all men . . . and can be judged by no one . . . and he has plenitude of power on earth. . . . The empire of heaven and earth has been granted him by God.’<sup>48</sup>

The canonists’ concept of the plenitude of power in temporals rested finally on the premise that in the divine plan for mankind there must be one ultimate head—one final authority to act decisively and to declare justice beyond the chance of dispute. This theme was particularly stressed by Hostiensis: ‘For since we are one body in Christ, it would be a monstrosity that we should have two heads.’<sup>49</sup> More frequently stated were arguments that, without subtle analysis, rang changes on the theme that spiritual power was superior to temporal power because spiritual concerns were superior to temporals as the soul was higher than matter, and that accordingly the supreme spiritual power necessarily included complete temporal power; but such syllogisms implied a doctrine of unity as their premise. The underlying logic was essentially that which led publicists of a later age to the concept of sovereignty, with the single difference that the medieval lawyers were thinking primarily of a supreme executive and judge rather than of a supreme legislator. Behind their interpretations of specific texts and precedents and their glib deductions from time-worn maxims lay the need, common to all men and particularly cogent among lawyers, for finality and unity. The notion of an inexhaustible reservoir of authority in the vicar of God filled that need, and they seized upon it with enthusiasm. Against the claims of the canonists the civilist lawyers, staunchly defending the independence of the empire, were poorly

armed. They could and did attack particular arguments; they had no answer, except a stubborn reiteration of the Gelasian tradition, to the canonists' principle of unity.

Out of this intellectual background came the provocative claims of Boniface VIII, himself an expert canonist. In forbidding kings to tax the clergy of their realms without papal consent, he struck at a power which had become essential to the continued development, and even the existence, of the medieval kingdom, and which was certainly not a self-evident threat to the spiritual independence of the church. There was canonical precedent for his position, but it had long been disregarded in practice; to those who still clung to the Gelasian formula, the assertions of *Clericis laicos* must seem a blatant intrusion of the papacy into the secular sphere. And, although neither in *Clericis laicos* nor in the bulls which later demanded the submission of the king of France<sup>50</sup> did Boniface ever quite assert a direct papal power in temporals, the phrases used in *Ausculda fili* and *Unam Sanctam* included many that had become associated with the direct power argument,<sup>51</sup> and neither Boniface's actions nor his words give much ground for doubt that this was implicitly his own position.<sup>52</sup> After the issuance of *Ausculda fili*, a false bull specifically claiming direct secular authority was circulated in France, and this 'wonderful, new, unheard of'<sup>53</sup> claim was foremost among the grievances which stung the French Estates to proud resentment. The forgery was perhaps the work of Peter Flotte, a lawyer close to Philip the Fair; thanks to it, the real issue was defined.

It was defined also in the outburst of treatises and pamphlets, from both sides, that marked the course of the dispute. A significant group of these were written by civil lawyers supporting the king and may be taken as representing the point of view of this important and newly articulate class. The spirit of the writers was one of forthright nationalism, outraged by what they regarded as an unprecedented papal attempt to usurp power in the temporal sphere. Their method was legalistic rather than philosophical; they worked largely without benefit of Aristotle and with only the roughest of theological equipment; they tended to take their scheme of values for granted and to concentrate their attention on specific arguments and specific claims. They took their stand firmly on precedent, law, and the layman's common sense.

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What they understood best and expressed with a trenchant clarity derived both from practical experience and from Roman law was that a king must have the powers necessary to his function of maintaining peace and order. The kingship was older than the church; it owed nothing to the church and could yield nothing. 'Before there were any clerics, the king of France had the custody of his realm,' said a treatise<sup>54</sup> apparently drafted as a basis for Philip's answer to *Clericis laicos* and probably the work of Peter Flotte. The temporal possessions of the church, it continued, were themselves the gifts of laymen; the temporal privileges of the church rested on the grant or tacit permission of kings; but no such concession could take from kings 'the governance and defence of their realms, nor those things that are judged necessary or expedient to the said governance and defence by the deliberate counsel of good and prudent men.' The same spirit appeared in Philip's response when Boniface ordered him to make a truce with the emperor and the king of England:

'... Incontinent, before those same letters were read... [he] ordered and commanded in our presence that such protests as the following be made: namely, that the government of the temporality of his realm belongs to him alone, as king, and to no one else, and that he recognizes no superior in it, and that he is not obliged and does not intend, in matters pertaining to the temporal government of the realm, to submit or subject himself in any way to any living man; but he rather intends to do justice over his fiefs, to defend his kingdom continually, and, with his subjects, his allies, and his warriors, to further the right of his kingdom in every way.'<sup>55</sup>

The regalist lawyers' general position on the relation of church and state was in principle an extreme Gelasianism though in effect it gave the king considerable power over the clergy. The authority of the clergy should be confined to a strictly limited spiritual sphere and the king's control over temporal matters should include, without qualification, the temporal possessions and relationships of the clergy within his realm. The clergy were properly supreme in spirituals but subject to the king in temporals, said the author of *Rex Pacificus*,<sup>56</sup> for both pope and king were vicars of Christ in their spheres. Even as Christ on earth refused to exercise temporal authority, so the pope must withdraw from temporals. The judgment of temporal affairs according to

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human laws, said the author of the *Dialogus inter Militem et Clericum*, properly belonged only to 'him who has the right to establish laws and the function of interpreting and explaining and guarding them.' The claim of a concurrent ecclesiastical jurisdiction, *ratione peccati*, over the disposition of temporals was an absurdity whose logical conclusion would be to 'silence the king's courts altogether'; the jurisdiction of the church touched only cases of conscience and should, in temporal disputes, come into play only to enforce submission to the decisions of royal courts on questions of right.<sup>57</sup> Where temporals were concerned, said the author of *Antequam essent clerici*, the clergy were members of the body politic; thus taxes levied on them were not to be called extortions but 'rather subsidies due to the head from the body and the members, and also salaries provided for the defenders . . . of those who may not or cannot defend themselves.' To refuse to pay such taxes was *lèse-majesté* and would be punished as such.

The authors of these pamphlets did not conceive the *regnum* as an office within the Christian commonwealth. Very explicitly in the *Rex Pacificus* and implicitly in the others, the secular state was set off in sharp contrast to the ecclesiastical system and regarded as a separate institution with its own independent purposes and its resulting claims to the allegiance of its members. These laymen were quite orthodox in their acceptance of the importance of salvation and of the church as the institution through which salvation was secured; but one has the impression that they did not think of religion as affecting the ordinary business of living and that the extreme Gelasianism they advocated reflected a compartmentalism already achieved in their own minds. Thus they assumed the possibility of a definite cleavage between the spheres of the church and of secular government without evident awareness of the difficulties of maintaining such a division in practice or of the theoretical considerations behind the expanding claims of the church.

The problems which the lawyers could not see were soon to be given thoughtful treatment by theologians. For theologians on both sides the idea of a single Christian commonwealth remained fundamental. To the papalists it seemed that that single commonwealth must be governed under a single order of control culminating in the papacy. They were influenced not only by the intellectual need for a final authority to reduce multiplicity to unity but also, perhaps even more, by a



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feeling that the value relationships implicit in the world should properly be reflected in institutional relationships. The philosophical crux of their argument was the conviction that there must exist in an orderly, God-created society a single hierarchy of values, that spiritual values were of preeminent importance in that hierarchy, and that the value of temporal things was, at least to a great extent, contingent on their service to the higher spiritual values. Then, they argued, since the purposes for which temporal power existed were ordained to the purposes of the church, the temporal power itself must be subject to the control of the church in order to be true and valid. The theologians thus expanded and analysed a theme which the canonists tended merely to assert.

The most original and penetrating treatises supporting the papal claims were those written by Aegidius Romanus and James of Viterbo.<sup>58</sup> Aegidius saw Christian society as a hierarchy of lordships derived from and subjected to the *plenitudo potestatis* of the pope. Following the Augustinian tradition, he regarded all the works of natural man as corrupted by sin; human institutions were thus devoid of justice except as they were made subservient to the process of salvation administered by the church; this in turn implied that there could be no valid title to property or political authority except through subjection to the vicar of God.<sup>59</sup> Such subjection must be total. From the neoplatonist Pseudo-Dionysius, in particular, Aegidius derived the principle that the order of the universe was a single hierarchy in which the power of inferiors was totally derived from and totally subject to that of superiors; the Aristotelian doctrine of the superiority of spirit to matter defined the relation of spiritual and secular lordship within the cosmic scheme. The consecration of kings and the payment of tithes appeared as evidence of delegated lordship on the one hand and recognized subjection on the other. The feudal structure of the relationships between lord and vassal was the framework of Aegidius's system, which was further supported by an allegorical interpretation of such Scriptural symbols as the two swords and by an interpretation of history which made priestly authority prior to that of kings and showed that true secular authority had been originally instituted by and mediated through the church.<sup>60</sup>

But Aegidius's approach was not the only one possible: James of Viterbo erected an equally impressive structure on an Aristotelian

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basis, and thus demonstrated one possible line of development from principles which Aquinas had left ambiguous. His very respect for the moral ends of the state and the potentialities of man's rational nature led him to insist upon an institutional relationship between the state and the church. Whereas Aegidius—and, indeed, some anti-papalists—used the old, glib formula of the soul and the body to differentiate the functions of church and state, James argued that the state was also concerned with the soul and described the proper areas of secular and spiritual action in terms of nature and grace.<sup>61</sup> Similarly, he rejected the usual papalist attempt to show that the church was historically prior to the state, substituting an analysis, in true Aristotelian spirit, of development from the imperfect to the perfect: from the state, which merely expressed the highest potentialities of nature, to the church, which he conceived as the *societas perfecta*, the highest and most inclusive *regnum*, the community of grace toward which the natural community tended as the household toward the *polis*, and within which alone the natural community could attain its highest destiny.<sup>62</sup> Like Aquinas, he recognized a positive validity and positive moral values in the pagan state; like Aquinas, he found a harmony between nature and grace, in which grace did not destroy nature but raised it to its final perfection; but he went further than Aquinas in concluding that the relationship between the values served by the two institutions must imply an actual control of the state by the church, through which its perfection came. Thus he agreed with Aegidius that the authority of the Christian state was mediated through the papacy and must be continually subject to its supreme control.

To meet the attacks of the opposition it was necessary for the papalist theologians to demonstrate that the pope could properly hold a temporal as well as a spiritual authority. For this they marshalled a variety of arguments, many of which were already well worn by canonist use. They attempted to show that Christ's power was both regal and priestly; they cited the keys given to Peter and the two swords of which Christ had said, 'It is enough'; they found examples in sacred history, from Melchisedech down, of the union of regal and priestly authority in a single person; they drew on canonical precedent; they pointed to the Donation of Constantine—interpreted, of course, as a recognition of pre-existing authority; they glossed the claims of Innocent III and fitted them into their system. The most interesting approach was that

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developed by James of Viterbo. He began with the familiar, important distinction between two kinds of ecclesiastical power and argued that the *potestas ordinis*, the priestly power of administering the sacraments, was shared by all priests, whereas the power of jurisdiction was conveyed by Christ to Peter alone in the grant of the keys. This latter power, he argued, was a truly regal power, for 'the first and highest act of regal power is to judge, and all other powers flow from judgment'; thus it was clear that 'the pastors of the church are true kings, and among them the highest, the successor of Peter, is king of kings both secular and spiritual.'<sup>63</sup> Thus the pope appeared as endowed with a plenitude of temporal as well as spiritual power, and the Christian commonwealth appeared as a single *regnum* of which the pope had complete and ultimate lordship.<sup>64</sup>

Opponents of the theory of direct power charged that it violated the traditional division of the government of the world between the two powers ordained by God. This charge was denied by the papalists,<sup>65</sup> who insisted that they still regarded secular government as necessary and as endowed with an authentic jurisdiction in its sphere. The pope had no wish to disturb the jurisdiction of kings. Even as God permitted autonomy of second causes, so the pope normally left the secular sphere to the autonomous government of secular rulers, who assisted the church by taking from it the tasks inappropriate to its dignity. Thus the king held the temporal sword *ad usum*, as Bernard had said, but the pope *ad nutum*: that is, with a general supervisory power of 'command, indication, and direction.'<sup>66</sup> Using as his conceptual framework the feudal theory of divided lordship, Aegidius defined secular lordship of temporals as 'immediate and executory,' while the lordship of the pope was 'superior and primary.'<sup>67</sup> However, the supervisory control of the pope could on occasion be supplemented by direct action in temporals; casually, the pope could also use the temporal sword. 'The church does not regularly and generally intervene in temporals but intervenes immediately and by its own action only on the basis of some contingent cause or for some special reason; not that this results from the impotence of the church, but from its decorum and excellence.'<sup>68</sup> An expert canonist, Aegidius devoted several chapters<sup>69</sup> to an analysis of the implications of the theory of casual jurisdiction asserted in *Per venerabilem*, demonstrating that, since no theoretical limit could be set to the occasions on which the pope

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could intervene, casual jurisdiction itself implied a complete power in temporals. 'The casual jurisdiction of the pope, or that which he exercises in certain cases, is far wider than is the regular jurisdiction which the secular lord has'; it is equally 'universal' and 'more principal.'<sup>70</sup> Aegidius listed ten categories of temporal cases subject to the casual jurisdiction of the pope, accurately remarking that 'some of these cases are pregnant.'<sup>71</sup> Indeed, there remained no conceivable area of secular affairs not included in at least one of these categories; if a question were not 'annexed to spirituals' in any other way, *ratio peccati* would always apply<sup>72</sup>; and beyond the supervisory and casual jurisdictions of the pope there still extended, Aegidius claimed, his illimitable and inexhaustible plenitude of power.<sup>73</sup> With less systematic detail, James of Viterbo came out at approximately the same point.<sup>74</sup>

It is, of course, obvious to modern eyes that no subordinate government could operate successfully under such conditions. That it was not equally obvious to the papalist theologians was perhaps due to the fact that, like medieval men in general, they did not think of government as the carrying out of coherent policy but rather as a series of piecemeal acts of judgment and enforcement. The regalists lawyers, close to the actual process, were groping toward a concept of government that would base its claim to autonomy on its need for an assurance of territorial integrity and temporal continuity, but they could not quite formulate their practical awareness in abstract terms. Again, in entrusting a theoretically illimitable power of intervention to papal discretion, the papalists expected that that power would be used rarely and only for spiritual purposes; but they gave no grounds for that expectation. They saw no necessity for such guarantees, partly because of the formalism of their systems, and also partly because they tended unconsciously to identify the human wielder of power with the superhuman source from which his power was derived: it was characteristic of their whole argument to make no practical distinction between the vicar of Christ and Christ Himself.

Their structure was strongest at its foundations. Their great contribution to medieval thought was to make fully explicit the premise on which all papal claims to influence on secular affairs must be based: the potential permeation of every area of life with spiritual significance, the necessary 'order' of all values in a world created by and moving



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towards God. That premise no one in the Middle Ages was yet prepared to challenge, though perhaps the regalist lawyers were ready to ignore it. But when the papalists argued that the relationship of values must imply a single institutional hierarchy, and thus transmuted a papal claim to guide temporal affairs to spiritual ends into a claim to the possession of temporal power itself, they exposed themselves to attack by more conservative theologians.

Most important of these was John of Paris, whose *De Potestate Regia et Papali* attempted to define a middle way between the Waldensian position and that of the extreme papalists. His treatise is remarkable for its comprehensiveness, its clarity, and its combination of a subtle originality with a firm grasp of tradition. The same school of thought and the same critical years (1302–1303) produced two other, anonymous, French treatises that also deserve mention. The *Quaestio de Utraque Potestate*, from which John of Paris took some of his arguments, was a rather conventional defence of the independence of the secular power, weakened by its acceptance of the distinction between body and soul as the basis of the two jurisdictions. A short gloss on *Unam Sanctam* outlined a theory very like that of John of Paris, whose work its author appears to have known.<sup>75</sup>

A large part of the writing of the theologians, like that of the regalist lawyers, stayed on the plane of particular answers to particular arguments, especially those based on authority.<sup>76</sup> In general, all the defenders of the independent state emphasized a literal rather than a mystical interpretation of Scripture, pared down the list of authorities to be accepted as cogent, and examined events and sayings in their context; they balanced quotation against quotation and precedent against precedent. They refused to recognize the validity of papal testimony in favour of papal rights. We have already seen how they handled such an historical argument as that based on the Donation of Constantine.<sup>77</sup> They countered the papalist assertion that Jesus held regal power by citing such statements as 'My kingdom is not of this world,'<sup>78</sup> which John of Paris, especially, developed through making sharp distinctions among the powers possessed by Jesus as God, as Man, and as the risen Mediator.<sup>79</sup> They distinguished between God and Christ, and between Christ and His vicar. Bernard of Clairvaux served them as well as the papalists; and, as they demonstrated, the allegory of the two swords could be interpreted in a number of different ways. But the greatest

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interest attaches to the rational case developed by the theologians and, especially, to the system of John of Paris.

His position was essentially an argument that an order of ends was consistent with a diversity of means and that the proper relationship between spiritual and secular values could best be furthered through the interplay of mutually independent institutions. The foundation of his thought was Aquinas's concept of the relations of nature and grace and Aquinas's view of the world as a loosely articulated unity of order in which each part had its own end, related to but not absorbed by the ends of others. Diversity was established by God, and God could be trusted to secure its final integration. In answer to Aegidius's claim that there could be no justice without the intervention of the church he quoted Aegidius's own master Augustine: 'The moral virtues can be perfected without the theological.'<sup>80</sup> In contrast to James of Viterbo, who had drawn a different conclusion from Aquinas's principles, he insisted that secular authority was independently established by God and was adequately based on the values it specifically served; it needed no further perfecting by way of the church.<sup>81</sup>

The principles which differentiated the two areas of authority must be found by analysis of the functions appropriate to the end of each.<sup>82</sup> Both spiritual and secular authority dealt with the whole man, since the goals of the state were moral and the church could reach the soul only through the body.<sup>83</sup> The specific function of the priesthood was the mediation of divine grace; its powers must be those necessarily implicit in administering the sacraments and preaching the divine word. It could have no direct temporal power. But John of Paris did not assume, as the lawyers tended to do, that a church confined to spiritual functions would have no concern with the state. Its power to preach and interpret divine law would set spiritual norms for temporal affairs; the sacrament of penance might induce, though it could not compel, specific temporal action. The church, accordingly, had a non-coercive directive power, which John regarded as the normal though not infallible means to securing the ordination of temporals to spirituals. Beyond that, however, control of the sacraments involved the weapon of excommunication, the only coercive weapon which the church could wield; a weapon intrinsically spiritual, but one whose indirect consequences might extend even to the deposition of rulers. But this weapon could properly be used only for the discipline of faults, already

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committed, which clearly belonged to the spiritual sphere; and its temporal results, however far-reaching, must be construed as indirect. The church could command temporal rulers only through its influence on their own consciences or those of their subjects. Finally, ecclesiastical courts had cognizance only of matters which were clearly questions of divine law; the application of human law in the settlement of particular disputes belonged only to the secular judge. The doctrine of jurisdiction *ratione peccati*, as interpreted by John of Paris, could not be used as a springboard for the theory or practice of direct temporal power.

As the pope was supreme in spiritual matters, so the prince was supreme in temporals. He, and he alone, had jurisdiction over questions of right in temporal goods. Since the clergy as such had no claim to temporal property beyond their claim to decorous subsistence, he could assess the taxes due from the clergy for the maintenance and defence of the secular state. Wherever temporal matters were concerned the clergy were subject to his authority; even the pope could be coerced by his temporal weapons if he committed temporal crimes, though such coercion could obviously have spiritual effects. Thus John balanced the indirect power of the pope in temporals with an indirect power of the prince in spirituals.

Finally, he retained the old concept of the intervention of either power in the sphere of the other when that other was gravely deficient in his proper function. Characteristically, he safeguarded this principle by insisting that such extraordinary intervention must proceed upon the initiative of the appropriate bodies within each realm: the cardinals could call upon the prince as a Christian to aid in deposing a spiritually delinquent pope; the barons and peers of the kingdom could ask the aid of the pope in deposing an unworthy king.

John supported his positive theory by specific refutations of the arguments of the papalists. He exposed the fallacies in their sweeping syllogisms by precise distinction or *reductio ad absurdum*, defined by apt illustrations. He accused them of equating superiority of dignity with causal sequence and pointed out that in a household a tutor in morals was superior in the dignity of his calling to the household physician; yet each derived his position independently from the common master.<sup>84</sup> He pointed out that Aegidius's Pseudo-Dionysian view of the universe as a single hierarchy of causation and authority was neither philosophically

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sound nor consistent with his thesis that the pope alone, by-passing the lower officers of the church, could exercise direct authority in temporals.<sup>85</sup> To the argument, 'Who can do the greater can do the less,' he answered that this was valid only for powers in the same category: man can generate man but cannot generate a dog.<sup>86</sup> To the argument that the lord of the ends must be the lord of the means, he answered that the owner of the horses was not necessarily the owner of the bridles.<sup>87</sup> The argument which moved from the relationship of higher and lower values to a relationship of necessary control and subjection between the institutions concerned was, he contended, riddled with fallacies. At the most, it could apply only in a situation in which the means followed by the lower institution were predetermined and its own ends had no value except as necessary means to the ends of the higher. Even in such a case, the ordination of means to ends did not necessarily require control but could be alternatively secured by direction and voluntary cooperation: the physician had no coercive authority over the pharmacist who compounded his prescriptions. If the lower institution had alternative paths to its end, or if its value was not exhausted in its service to the higher end, the argument of means and ends provided no basis for control.<sup>88</sup>

The Babylonian Captivity, which began in 1305, solved the conflict between France and the papacy by securing the practical influence of French policy on papal power. As the fourteenth century advanced, the conspicuous issue of relations between *regnum* and *sacerdotium* became again an issue between pope and emperor. In that conflict, which culminated in the controversy over the rights of Lewis of Bavaria, much of the argument focused on the more precise and technical claims which applied only to the empire.<sup>89</sup> The theory of direct papal power in temporals was never officially asserted, nor did it attain anything like a monopoly of opinion even among pro-papal ecclesiastics. However, it continued to develop in the writings of the more extreme supporters of the pope, theologians as well as canonists. Particularly in the *De Planctu Ecclesiae* of Alvarus Pelagius<sup>90</sup> and the *Summa de Potestate Ecclesiastica* of Augustinus Triumphus the doctrine of the plenitude of papal power in temporals was worked out in detail. But in essentials nothing new was added; there was nothing left to add.

Among the fourteenth-century supporters of the empire, three were particularly important. The first of these was Dante, who, like John of



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Paris, built his system on Aristotelian foundations. The *De Monarchia* was probably written about a decade later than the great works of the Parisian controversy. Intellectually, it belongs to an earlier period, for the position that Dante opposed was that of the thirteenth-century canonists and Tholommeo of Lucca; he was not acquainted with the further complexities explored by the Parisian theologians. His theory tended toward a complete separation of church and state.<sup>91</sup> In spirit, however, he may be classed with John of Paris, since he was certainly not dominated by an exclusive secular-mindedness such as characterized the French lawyers.

The main theme of the *De Monarchia* was the independence of the empire. This was established, first, by the philosophical demonstration that world-monarchy was essential to the full development of human nature<sup>92</sup>; secondly, by the defence of the legitimacy of the ancient Roman empire; and finally by refutations of a number of the arguments which had typically supported the thesis that it derived from original papal authority. On the whole, the discussion in the second and third books of the *De Monarchia* was competent rather than original and did not go deeply into philosophic argument. In the concluding chapter of the third book,<sup>93</sup> however, Dante eloquently presented his positive case for the independence of the two powers, through an analysis of the twofold nature of man, of the two beatitudes appropriate to his corruptible and incorruptible aspects, and of empire and church as the coordinate institutions which guided man to his twofold end. The general implication of the argument seems to be that Dante regarded the spheres of church and empire—of grace and nature—as completely separate.<sup>94</sup> On the other hand, a few short passages seem to recognize a necessary relation between the two spheres. In his refutation of the conclusions drawn by the canonists from Innocent III's analogy of church and empire to sun and moon,<sup>95</sup> Dante stated that although the temporal realm derived neither its existence, its authority, nor 'its action, in the absolute sense' from the spiritual realm, it did receive from the spiritual realm its capacity 'to act more powerfully through the light of the grace which . . . is shed upon it by the benediction of the supreme pontiff.' In his concluding chapter he alluded to the necessary service of the empire to man's supernatural goal in restraining the bestial impulses of man. Finally, at the very end of the chapter, he pointed out that his interpretation of

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the independent origin of monarchic authority was 'not to be construed so narrowly that the Roman prince is not subject to the Roman pontiff in any respect, since mortal felicity is in a way ordained to immortal felicity. Therefore let Caesar pay to Peter the reverence which a firstborn owes to his father, that, brightened by the light of paternal grace, he may shine more virtuously upon the whole earth, over which he has been set by Him alone Who is the governor of all spiritual and temporal things.'

How much weight should be given to these passages is a thoroughly vexed question. It is clear that Dante decisively rejected the theory of direct papal power in temporals. It is not clear what he wished to substitute for it. If he really believed in total separation of powers based on total separation of function, these passages must be interpreted as mere lip-service to the papacy—an unattractive suggestion—or, more plausibly, as unconscious inconsistency. They might well, however, imply that Dante would have accepted a non-coercive influence of the pope on temporals of the sort defined by John of Paris as directive; or, if we assume that Dante was not entirely aware of the implications of his absolute premises, we may perhaps guess that he might have been willing to accept a narrowly-construed indirect power. Given Dante's intellectual context and lack of technical training, it is possible that he did not recognize his obligation to choose among such fine-drawn alternatives. Perhaps the safest thing to say about the *De Monarchia* is that Dante certainly believed that an analysis of the purposes of the two authorities would rule out total subjection and justify something approaching absolute separation; beyond that, his theory is incomplete.

The fourteenth-century opponents of the pope, in general, continued to assert some variant of Gelasian theory. The great exception was Marsiglio of Padua, who challenged traditional principles with a bold and ingenious system which fused state and church into an institutional unity, concentrated both ecclesiastical and secular authority in the prince, and reduced the clergy to a mere ministerial and determinative role in spirituals.<sup>96</sup>

His position involved a drastic reinterpretation of the role of the priesthood. He retained the traditional notion that through the sacrament of orders the priest was endowed with a supernatural power to administer the sacraments and interpret the will of God, but he flatly

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denied the existence of a divinely-granted *potestas jurisdictionis* as a corollary to the *potestas ordinis*. The essence of the sacrament of penance was a direct relation between God and the sinner; in giving or withholding absolution, the priest merely proclaimed the probable decision of God. The power of the keys was the power of a turnkey, not of a judge.<sup>97</sup> In so far as excommunication meant exclusion from Christian society, this weapon was not in the hands of the priest. He appeared as the physician who defined the spiritual disease, recommended the appropriate measures, and shared in their promulgation and execution, but the decision which gave compulsive effect to his recommendation must come from an authority endowed with public power as representative of the entire church community.<sup>98</sup> The coercive sanctions of divine law as such were applied by God alone; wherever it was appropriate that divine law be embodied in human law through coercive command, the role of the priest was merely that of the consultant expert. An important aspect of Marsiglio's theory is the high value that he apparently set on the insight into divine law implied in the priestly character. He continually insisted that the prince's decisions on spiritual questions should proceed on the recommendation of the priesthood.<sup>99</sup> But 'no single priest, or college of priests' could be trusted with authority where the welfare of the community was at stake; thus priestly expertise must be checked by the collective wisdom of the community—a dubious argument, since in practice the community's decision would be delegated to its prince.

Marsiglio also clung to familiar tradition in believing that authoritative government within the church was necessary to secure the unity of the faith and the orderly maintenance of spiritual functions. But he claimed that reason and revelation alike showed that this authority was fundamentally vested in the corporate body of believers.<sup>100</sup> The arguments by which he had proved the location of secular authority in the *universitas civium* were, he believed, equally applicable to the church. And, by a remarkably clear-headed analysis of the New Testament record, supplemented by a very arbitrary selection of patristic quotations, he showed that the distinction between priest and bishop was unknown in the primitive church, that Peter had exercised no preeminence over the other apostles, and that authoritative decisions were originally made, even in the presence of the apostles, by the entire Christian community. The hierarchic organization of the clergy

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and the primacy of the bishop of Rome were, accordingly, later institutions, established merely for the convenience of the expanding church; the powers of the hierarchy, so far as they were not usurped, must have ultimately derived from the original authority of the Christian people.

The primitive church developed within a pagan state; thus its organization must have been autonomous. Marsiglio pointed out this fact without investigating its rather inconvenient implications for his principle that all authority within a society must be channelled through a single *pars principans*. His concern was with the Christian world of his own day, in which the membership of church and state could be presumed to be identical.<sup>101</sup> Thus the secular *legislator* of *dictio* 1 appeared in *dictio* 2 as the *legislator fidelis*; and this coincidence of the secular and spiritual constituencies enabled Marsiglio to present the secular *pars principans* as the officer by or through whom all the authority latent in the church membership was exercised. Accordingly, in Marsiglio's plan for the Christian state, the secular ruler, guided by clerical advice, controlled the ordination and institution of priests and the allotment of benefices; he could command the priests to perform their duties; he supervised their use of the property assigned to religious uses and, of course, taxed it at his discretion; he disciplined and could disestablish the priests. He commanded excommunication, repressed heresy, and wherever appropriate added to the prescriptions of divine law the coercive sanctions which turned them into effective human law. In short, wherever the mission of the church required compulsive action in this life, that action proceeded, in principle, from the original authority of the church membership; in practice, from the secular ruler acting in its name or, if from the clerical hierarchy, then by an authority conceded to it by way of the secular ruler and subject to his control.<sup>102</sup>

The paradox involved in Marsiglio's retention of the medieval notion of the church as a coercive institution while denying it autonomous coercive organization became most conspicuous when he grappled with the problem of maintaining its universality.<sup>103</sup> He met this problem by planning an elective universal council representing the universal Christian *legislator*, composed primarily of the clergy as experts in the faith and in divine law, but also of laymen. This council was to define the faith, and in this function it was endowed with the



supernatural infallibility of the church. It was also to make all appropriate prescriptions for the uniformity of ecclesiastical practice and apparently, also, recommendations for ecclesiastical discipline and even, on occasion, for the excommunication of rulers. It was to elect the pope, who would act as a sort of chairman and executive secretary for the council. The authority of the council was in principle that of the universal Christian community. But since the Christian community had no coercive agency except the state, the convening of the council and the implementation of its recommendations required state action. This action Marsiglio, with evident inconsistency and evident embarrassment, entrusted to the emperor<sup>104</sup>; to base the existence and effectiveness of a universal council upon the consensus of a number of separate rulers would have been, he seems to have felt, beyond the bounds of possibility.

It is obvious that no simple formula can accurately summarize Marsiglio's system. It is sometimes said that, in confining the clergy simply to non-coercive spiritual functions, he separated church and state in a way that anticipated the position of confessional protestantism. But the confessional churches also reduced the coercive aspects of ecclesiastical organization to a minimum and thus were able to assert a claim to autonomous organization and immunity from state control except to the extent that such control might be dictated by the purely secular interests of the state as such. This was by no means Marsiglio's position. The statement that Marsiglio separated church and state ignores the vital role played in his system by his principle of the identity of the secular and the ecclesiastical legislator in the Christian state; it also ignores the fact that he clearly thought of religion as having compulsive and disciplinary aspects and that he clearly envisaged a degree and kind of state action in religious affairs far beyond what could be based on the principle that religion might have some secular effects.<sup>105</sup> The separation in Marsiglio's theory was not between church and state, but between the ritual and declaratory functions of the church, which were assigned to the clergy, and its organizational, compulsive, and disciplinary aspects, which were, in effect, assigned to the secular ruler. His theory actually interlocked church and state, anticipating the protestantism of the established church rather than that of the confessions. Another common formula for Marsiglio's system is that it subordinated the church to the state, but this also needs careful examination. For,

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in a sense, Marsiglio's state was itself subordinated to the purposes of the church; the state of *dictio 2* was the coercive organization of the church itself. What Marsiglio subordinated to the state was not the church, as he defined it, but the clergy; that subordination still left them a narrow area of freedom and influence in their restricted role; the state to which he subordinated them was a state conceived as both a secular and an ecclesiastical institution. In intention, Marsiglio amalgamated state and church; in practice, the effect of the structure he outlined would obviously have been to leave the religious interests of the community virtually at the mercy of the secular ruler.<sup>106</sup>

One may question whether Marsiglio was aware that this would be the upshot of his system. Certainly he was far more sensitive to secular than to religious values. Yet he never suggested that secular interests should take precedence over spiritual needs, and the whole line of argument developed through *dictio 2* suggests that he believed that all the valid claims of Christianity would be satisfied by his solution. In this, it may be, he was betrayed by the peculiarly legalistic bent of his mind. We have already had occasion to notice that he tended to think in terms of formal relations of authority rather than in terms of political processes. As in *dictio 1* he had assumed that the law of the community, guided by the advice of experts, would almost automatically embody 'justice and civil good,'<sup>107</sup> so throughout *dictio 2* he seems to have assumed that the prince who formally derived his power from a Christian *legislator* would be responsive to its spiritual interests and to the recommendations of the clergy and would almost automatically implement them with the coercive authority that he monopolized. But he showed no cause, in inherent probabilities or institutional pressures, to bring about this happy result.

On close examination, Marsiglio's system betrays a number of flaws not immediately evident. His case for reposing ecclesiastical authority in the community of believers is not really adequate; his best arguments on this point are negative or historical, not analytical. The Aristotelian case for locating authority in the community is even less conclusive here than when applied to secular concerns: it is undermined not only by the facility with which Marsiglio equates the community of *dictio 2* with its ruler, but also by his continual recourse to the clergy as the group whose opinions on divine law are really significant. Retaining the notion of the divinely-implanted character of the priesthood,

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Marsiglio cannot satisfactorily explain why this special gift should not constitute a claim to an area of autonomy. Moreover, the logical process by which Marsiglio makes the transition from the authority of the community of believers to the authority of its secular prince is too fragile. From the viewpoint of political realism, there seems no reason why a secular ruler should be the most appropriate guardian of the spiritual interests of his constituents. From a philosophic viewpoint, the best justification for an institutional amalgamation of church and state would be a theory of the ultimate interrelation of spiritual and secular values, whereas Marsiglio's Averroistic tendencies should logically have issued in a clear-cut theory of separation. Marsiglio's positive case for the fusing of state and church is simply the coincidence that they have the same members; standing alone, this argument seems rather arbitrary.<sup>108</sup>

The force of Marsiglio's whole argument actually lies in its negations, which derived from experience of the Italy of his day: his intense distrust of a clerical hierarchy endowed with a power that could impinge on seculars, and his axiomatic conviction that the existence of two centres of authority within a single society must result in the disruption and destruction of that society. This latter principle, clearly stated in *dictio* 1, supports the whole process of Marsiglio's argument and buttresses the principles that, positively, are weak. If authority cannot be divided, and if authority in secular affairs cannot be entrusted to the clergy, it follows that authority in ecclesiastical affairs will have to be entrusted to the prince. From the point of view of Marsiglio's driving motives, the whole roundabout structure of thought that turns on the theme of the legislator—with all its baffling atmosphere of formalism and unreality—may best be understood as machinery to implement and expand this fundamental syllogism. The *Defensor Pacis* is a remarkable achievement; however, in its monolithic construction of authority Marsiglio's system is a precise parallel to the systems of the proponents of papal theocracy,<sup>109</sup> and just as their monism failed to take into account the genuine claims of man's secular nature, so Marsiglio's monism, for all his ambitious intentions, failed to provide securely for man's spiritual needs.

Like Dante and Marsiglio, William of Occam looked to the emperor as the champion who would defend values threatened by papal tyranny. But there nearly all resemblance ends. Occam was far too keenly aware

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of possible nuances and alternatives to find rest in Dante's simple dualism. In contrast to Marsiglio's secular patriotism, his first concern was the defence of spiritual values; in contrast to the glib optimism with which Marsiglio substituted a new Leviathan for the one that he detested, Occam was haunted by a distrust of all concentrations of power. This distrust issued in a complex system whose themes were the inherent limitation of all authority and a pluralistic pattern of counter-checks. His breach with tradition was less obviously drastic than was Marsiglio's but in effect, perhaps, no less radical. For his adroitly questioning mind penetrated familiar assertions with doubts and qualifications, so that what had once seemed a structure of fixed rules was revealed as a network of precarious principles with merely contingent validity, whose application to a given case might finally depend on the judgment of private minds.

Of earlier theorists, Occam was perhaps closest to John of Paris, whose work he certainly knew and used. The principle that authority was measured by its necessity to the end for which it existed became one of Occam's characteristic themes; he also echoed John of Paris in his solutions to some particular questions. But there was a major difference. John was particularly disturbed by papal aggression into the secular realm, supported by theoretical claims which he regarded as ungrounded innovations. Thus he could hope that problems could be solved through the clarification of sound tradition and a precise demarcation of secular and spiritual spheres. Occam had no such assurance. He was driven by the tragic conviction that John XXII was not only an aggressor against the secular power but also, on the vital question of apostolic poverty, a traitor to the spiritual interests properly confided to his charge. In that betrayal the pope was obviously supported by most of the legitimate institutional structure of the church; only a persecuted minority among the clergy accused him of the heresy which to Occam's eyes was blatantly obvious. In a situation in which legitimate authorities acting within their proper spheres pervert with impunity the whole purpose of their offices, there is no easy answer. Thus Occam was forced to a more deeply probing analysis of the bases of authority in church and state and to a more complex and conditional solution.

On the whole, he accepted the monarchic authority of the pope within the church as necessary to 'securing the eternal salvation of souls



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and the organization and government of believers,'<sup>110</sup> and as established by the mandate of Christ. He did, indeed, examine the possibility that the primacy might rest upon human institution<sup>111</sup> and his rational treatment of the question betrayed an indecisiveness that suggests that, although he opposed Marsiglio's position, reason did not entirely convince him of the opposite. Reason, however, demonstrated that monarchy was normally the best form of government for the church as for all human societies, and the question of the origin of the primacy was for him finally settled by the testimony of Scripture. Christ's grant of authority to Peter was a datum of faith.

That authority, however, was intrinsically limited by the purpose for which it was given. It was a grant of 'all the power which could safely and prudently be committed to one man, for the sake of the common utility, in regard to all things necessary to the governing of the community in relation to good morals and the spiritual needs of believers.'<sup>112</sup> That power was ministerial, not dominative, in the sense that it existed for the common spiritual welfare of men and could not exceed what was necessary by that criterion. Its extent was a proper topic of study and debate. Papal commands that exceeded the bounds of papal authority had no binding force and could properly be resisted by any individual.<sup>113</sup> Even in the spiritual area, the pope could not command what was supererogatory. The law of the gospel was a law of liberty; papal government was a government over free men and could not abridge their basic freedom. It was established within a continuing context of 'all the rights and liberties which unbelievers licitly and justly enjoyed before and after the incarnation of Christ.'<sup>114</sup>

From this principle it was clear that papal power as such did not normally include the area of temporal government and property, except to the extent that temporal subsistence was necessary to maintain the clergy in their spiritual activity.<sup>115</sup> Scriptural and other authority had repeatedly stressed the fact that the papal mission dealt with spirituals and not temporals; for the sake of that mission the pope should not become involved in secular affairs. Precedents showing the exercise of temporal authority by the pope were instances either of casual jurisdiction, which proved nothing; of mere usurpation; or of specific and revocable delegation from human authority. Occam assumed that such grants might account for the papal role in the history of the empire; their extent, he argued, could be known only from

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analysis of the original documents and was not a matter for papal determination, but for the decision of wise and impartial experts.<sup>116</sup>

Occam's position, then, contrasts clearly with the thought of those who began with the notion of an intrinsically illimitable plenitude of power in the pope and expected that its application would normally be mitigated by papal discretion. However, the principle that the authority of rulership must include all that is necessary for its end is, in a universe of unforeseeable contingencies, an elastic concept. Precisely as Occam had recognized an emergency power in the emperor to violate his normal boundaries at the manifest demand of the common utility,<sup>117</sup> so he retained the concept of papal plenitude of power in the sense that specific necessity might sometimes supplement the pope's regular power with a casual authority to which no previous limits could be set.<sup>118</sup> But his approach through a conception of a limited regular authority meant that an exercise of casual authority must be justified in terms of the individual situation. The burden of proof was laid on the pope; the proof must be one of manifest necessity; and the papal right to act on this uncharted frontier must be subject to 'the discretion and counsel of the wisest men. . . .'<sup>119</sup>

The normally limited power of the pope in spirituals was counter-balanced by the power of the emperor in temporals, also normally a limited power. As we have seen,<sup>120</sup> Occam based imperial authority on the quasi-natural right of men to provide for their own government. Its origin and validity were thus basically independent of papal determination. The structure of temporal property was similarly grounded on the pristine and permanent 'rights and liberties of unbelievers,' modified by divine law only in so far as the clergy could claim the right to necessary subsistence. Whatever property the church possessed was held by human law and accordingly subject to the jurisdiction of the secular ruler. He also had jurisdiction over the clergy in all secular crimes.<sup>121</sup> Normally, then, the areas of spiritual and secular authority were distinct, and the harmonizing of secular with spiritual values was to proceed through admonition on the one hand and voluntary collaboration on the other. Harmony was assumed to be possible because the principles of reason as well as of revelation ultimately derived from the will of God. In his view of the normal relations of church and state Occam did not greatly depart from one school of traditional opinion.

But for Occam, convinced of the stubbornly individual character

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of all phenomena, no general principle of human relations could be expected to hold true in every circumstance. The questioning, qualifying habit of mind which had already produced his nominalistic philosophy made him by natural inclination the explorer of exceptional cases in political theory. The shock of the heresy of John XXII likewise impelled him to a search for principles of right that might apply when normally useful and legitimate institutions ceased to serve their ends.

Thus he raised the question whether, in spite of the generally binding divine prescription of monarchy, the church might have a latent right to provide for its own government in whatever way was expedient on the occasions when the acceptance of a single authority might be impossible or disastrous. Such occasions might conceivably give the church a temporary right to change its form of government to aristocracy, or to a plurality of independent units.<sup>122</sup> Occam pointed out that continuous papal authority was not necessary to the unity of the church: there was always an interval, which had sometimes lasted for several years, between the death of one pope and the election of another. He also argued that the choice of a pope was governed by the same general *jus gentium* principle as applied to every instance of the establishment of a ruler: thus it belonged to the community of believers or, more specifically, to the clergy and people of the diocese of Rome. The elective right of the cardinals was a delegated authority, justified by its normal utility, revocable in emergency.<sup>123</sup> He developed, in short, a whole conception of the church as a community with latent rights to secure its own good government precisely parallel to the rights belonging to the secular community. On this conception he also based the right of the church, in default of a true pope, to organize for itself a representative council which could take whatever action was necessary to secure its spiritual ends through orderly government. Such a council could, of course, judge and depose a criminous or heretical pope.<sup>124</sup>

Under the circumstances of his day, the appeal to a council meant an appeal to the emperor, whose authority was obviously needed to summon a council, enforce its judgment on the pope, and support whatever provisions it might make for the establishment of a true pope and the restoration of health in the church. John of Paris had limited the rights of a secular ruler in the spiritual realm to the indirect effects of his intrinsic temporal power plus intervention on spiritual grounds on the invitation of spiritual authorities. William of Occam went

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further. The emperor could casually intervene in spirituals on his own initiative, not on the basis of his imperial position but as a Christian and as the representative of the Christian laity.

Occam's conception of the church minimized the distinction between the laity and the clergy. The only ecclesiastical rights of which the laity were basically incapable were those implied in ordination, or divine office; they shared on an equal footing with the priesthood in all rights pertaining to the general welfare of the church, including the right to define the faith and the corollary right to judge the pope.<sup>125</sup> On the elements of the faith, Occam said, any mere Christian was competent to judge; more complex questions required determination by the learned.<sup>126</sup> The infallibility which Christ had promised the church was not attached to any single office in the church or to the church as an institution. Unlike Marsiglio and in contrast to the orthodox tradition, Occam sharply distinguished between the external, institutionalized church and the church as the totality of true believers.<sup>127</sup> As any one man might err, so might any number of men. The entire order of the clergy might be infected, in which case the rights implied by the promise of infallibility would devolve exclusively on the laity. It was even conceivable that all the adult members of the church might err and the promise of Christ be saved by 'the little baptized babies.'<sup>128</sup> Short of that final contingency, the council should represent whatever part of the church membership, lay or cleric, male or female, remained true to the faith. In default of summons by the pope, the cardinals, or the prelates, whatever action was necessary to secure the meeting and effectiveness of a council might properly be taken by the emperor. The same line of argument as established the emperor's right to summon and preside over a council would also support his casual right, if necessary, to choose a pope in the name of the Roman people or to intervene anywhere in the spiritual realm when the default of its regular officers had created a situation of manifest necessity.<sup>129</sup>

An important motif in Occam's thought was the idea of the mutually suppletive power of officers within a society. As in the crippled body of an individual another organ must take over the function of the defective one, so, even more, 'in a mystic body . . . when one fails, another, if it has the power, supplies its lack.'<sup>130</sup> This principle derived from the rationalistic assumption, never very far below the surface of medieval political thought, that somewhere in every society there must exist the



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power to do what had to be done to safeguard its existence and purposes. Circumstances must dictate where that final power was located at any given time. In the circumstances of his own time, Occam believed, the obvious solution lay in a council imperially summoned. But, true to his persistent relativism, he refused to erect that solution into an exclusive principle. In default of imperial action, the church would have the right to assemble its representatives spontaneously. That right might conceivably devolve on a mere fraction of the visible church. But whatever institutional form the church might adopt to secure its purposes would share the fallibility that characterized the pope and every human agency.<sup>131</sup>

Thus in Occam's system the normal pattern of government in the Christian commonwealth was bordered by a frontier of special cases which required a more fundamental criterion than could be derived from traditional right or official fiat. For the solution of problems that arose on that frontier he was willing to make use of precedent and canon law, but he would not admit their validity against the imperative of a particular situation. Even the prescriptions of revelation must be understood 'with their exceptions.'<sup>132</sup> The only final criterion was 'evident reason, or an authority of Scripture reasonably understood,'<sup>133</sup> and a presumption of reasonable understanding attached to no earthly institution. Within the terms set by the data of faith, Occam's system was one of rationalism pushed to the bitter end. It issued, accordingly, in the only possible conclusion: that on that borderline where laws and governments fail, the final judge of right must be the mind and conscience of the individual.

Occam's theory was almost the last important contribution to the medieval discussion of church and state relationships. The controversy between papacy and empire was alleviated by the Golden Bull; the dominant problem of the succeeding period was the problem of the schism and of reform within the church. However, criticism of the worldliness of the church was coupled with a growing nationalist resistance to papal interference and financial exploitation, increasingly resented as foreign. Both attitudes were reflected in John Wyclif.<sup>134</sup> He asserted the ideal of apostolic poverty, insisted that personal righteousness and service to God were the essential conditions of all rightful lordship including clerical office, and defended the right of the king to confiscate the property held by clergy who failed to meet these

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terms. He also asserted that all clerical jurisdiction was derived from the king, who represented the divine kingship of Christ. From these doctrines he moved on to others that attacked the institutional conception of the church. He denied that the sacraments were necessary to salvation, defined the church as the fellowship of the elect, attacked the supremacy of the pope, and pointed to the Scriptures as the sole authority on the faith. Wyclif and the Bohemian John Hus, who had adopted his opinions, were condemned as heretics by the Council of Constance.

The conciliar attempt to restrict papal authority in the spiritual realm was typically coupled with a denial of direct papal authority in temporals. The principles of John of Paris and William of Occam influenced many of the leading conciliarists, especially those who came from the University of Paris, which had become a stronghold of Occamist theology. A minority drew their opinions from Marsiglio. More striking, however, than the anti-papal attitudes of the conciliarists was the beginning of the papal retreat from extreme claims. The conciliar movement tended to drive the popes to seek alliance with temporal rulers, and the conciliar period accordingly ushered in the age of the concordats, in which the pope conceded through bilateral treaties various regalian rights over the clergy within a number of European kingdoms. This trend was paralleled by a return to the theory of indirect papal power in temporals in the important treatise of one of the most loyal supporters of papal absolutism in spirituals. Turrecremata, in his *Summa*,<sup>135</sup> denied that the pope had 'full jurisdiction throughout the world in temporals . . . and that the jurisdictional authority of all secular princes has been derived from the pope.' Nevertheless, he argued, the pope had some authority in temporals as a consequence of his spiritual right: 'as much as is necessary for the conservation of spiritual things, for the direction of the faithful to eternal salvation, for the correction of sinners, and for the maintenance of peace among the Christian people.' Expanding these principles, Turrecremata repudiated the claim that the pope was an ordinary judge or administrative superior in temporals; he listed, however, sixteen kinds of authority in temporals consequent on the pope's spiritual function, including a directive power, cognizance of all mortal sins and of all 'dubious or ambiguous cases on which lower judges disagree,' and wide rights of intervention in case of the obstinate heresy, apostasy, or negligence

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of secular princes. In the sixteenth century, Bellarmine followed a similar line of thought in developing his concept of indirect power: the right of the pope, through commands binding on the consciences of the faithful, to bring about specific action in temporals imperatively required by the spiritual needs of the church. This right became the maximum claim of later Catholic thought.<sup>136</sup>

In the Protestant Reformation, accepted principles of Christian doctrine underwent revolutionary change and the unity of the medieval church was splintered by the rise of a number of sects each convinced of its monopoly of truth. Although their full effects were not immediately apparent, the Protestant appeal to Scripture and the Protestant doctrine of the priesthood of all believers ultimately undermined the foundations of ecclesiastical authority even in the spiritual area. The right of private judgment, asserted only on the margin of medieval thought, gradually became a central feature of Protestantism; the unity of the church was reinterpreted as inward and voluntary; penance disappeared from the list of sacraments necessary to salvation; the remaining sacraments were reinterpreted in a way that reduced the priest to a mere ministerial role and ruled out excommunication as an effective weapon. Completely new problems in the relations of church and state appeared, and solutions without medieval forbears. A new type of theocratic theory was an early product of Calvinism, but there was little opportunity for theocracy in practice. Lutheranism led to the establishment of state churches under princely control, but Luther's principles had little in common with those of Marsiglio. Marsiglio's influence was more clearly apparent in England: an English translation of the *Defensor Pacis* appeared under Henry VIII, and Hooker's defence of the English establishment obviously owed much to its arguments. The most important problem in the relations of church and state in early modern times was the proper relation between the national church and other religious groups. Attempts to apply the medieval principle of enforced unity ultimately wore themselves out and gave place to the characteristically modern solution of toleration, increasingly coupled with a tendency toward complete institutional separation of church and state.

This separation has been possible partly because of the development of a thoroughly secular interpretation of the nature and function of the state—an interpretation only foreshadowed in the Middle Ages. It has

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been possible also because of an increasing stress, particularly in the Protestant confessions, on the individual, spontaneous, and spiritual character of religion. It may also be related to growing indifference and doubt. However, for those who are convinced of the importance of spiritual values and of the suprarational truths conveyed through religion, the question of the ordination of temporals to spirituals remains, of course, a real and imperative question. On the whole, the modern answer has been that this ordination should occur within the individual conscience; and this answer in turn has raised the question—among others—of the church's right to access to the individual conscience through opportunities in education comparable with those of the secular state. This question is today the major theoretical issue in the relations of church and state; but it is strangely remote from those that once exercised medieval minds.

For the medieval problem, no one offered a completely satisfactory solution. There is a tendency among modern historians—particularly non-Catholic historians—to prefer the solutions that issued in monistic rule. They admire the ruthlessness with which the papalists drove to 'their logical conclusion' premises supposedly implicit in the medieval view of life; they admire Marsiglio's perception that papal absolutism could be effectively combated only by substituting a similarly complete absolutism of the state. Those who continued to maintain any kind of dualism they treat with a faint contempt for their failure to see that their cause, if still hopeful in practice, was already lost in theory. But one may question whether the intellectual advantage was definitely with the monists. Their doctrines, however restful to the logical mind in providing a precisely located sovereign, had the weakness of excluding values that persistently asserted themselves, while the dualist position had whatever strength may lie in a more accurate reflection of the real complexity of the world.

Certainly those who diagnosed the problem as partly due to the fact that the claims of the papacy were founded on secular as well as spiritual ambition took a real step toward clarifying the issue. One may respect their consequent attempts to distinguish in terms of the church's purpose between its necessary and unnecessary claims. The principles formulated in this connection were finely thought out; acceptance of those principles in practice would at least have narrowed the field of controversy. The problem could not have been abolished, however,



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because, as was increasingly recognized, no area of human life could be defined as exclusively secular.

Certainly no absolute dualism, completely separating the spheres of church and state, could logically be derived from the continuing medieval conviction of the primary importance of salvation and of the role of the priesthood as the necessary agency through which divine law was interpreted and salvation mediated. And this was true no matter how the role of the state was defined. If this world was conceived as primarily evil and the function of the state as intrinsically coercive, so much the more must the church be able on occasion to insist that the secular sword support its preaching by the terror of discipline and provide the conditions within which its own mission could be securely carried on. If the state was alternatively conceived to aim at positive moral goals capable of natural fulfilment, still those goals must also be recognized as subordinate steps in a hierarchy of values leading toward the work of grace. Thus, as the papalists particularly insisted, and as the more acute defenders of indirect power also recognized, no area of human life could be defined as permanently exempt from spiritual significance, no field of secular policy was not potentially liable to an alternative of supporting or conflicting with the imperatives of the process of salvation. These implications might be ignored, as perhaps they were ignored by the civil lawyers and by Dante, but so long as they were not openly challenged, a state with purely secular concerns was inconceivable and an absolute dualism was a *non sequitur*.

However, even those who were most aware of the interweaving of secular and spiritual concerns did not challenge another persistent medieval assumption: that the good order of Christian society required some differentiation of function between priest and secular ruler. Even Marsiglio felt that priesthood included a peculiar capacity to interpret the divine will; and, on the other hand, the most extreme papalists approved a normal separation of the spheres of priest and king, if only to insure the freeing of the spiritual officers from undue embroilment in the temporal business that could be handled adequately in terms of temporal norms. Neither the extreme papalists nor Marsiglio were monists in the sense that they wished to entrust the complex interests of the Christian commonwealth to a single official hierarchy. They merely insisted that wherever conflict could occur, temporal and spiritual considerations must be integrated by a single authoritative

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decision, and that this could be accomplished only by the recognition of an unlimited power of final command, in every area of life, located at the apex of the Christian society. However, they failed to observe that this concentration of power in pope or *pars principans* virtually nullified the differentiation of function which they professed to find valuable; for without some safeguarded area of autonomy distinction of offices becomes all but meaningless. The medieval problem existed because medieval men found values in both temporal and otherworldly goals; instead of resolving the problem, the monistic theorists overruled it. Their solutions were artificially simple solutions on a merely juristic plane.

In contrast, the theories of the moderate dualists—such as John of Paris and William of Occam—seem superior in comprehensive realism. They take us back from the realm of sweeping syllogisms to a complex world of qualifications and distinctions, of fallible rulers in church and state, of values not easily reducible to a single scale, of free men with a claim to insist that juristic unity must not involve the sacrifice of right. They pointed out that the potential permeation of every phase of life with spiritual significance did not mean that spiritual values were always at stake everywhere; they insisted that separation of function be sufficiently complete to allow the attainment of the ends pursued thereby; they found a bulwark for a normal autonomy of the state in the principle that the church's superior mission gave it a right of intervention in temporal affairs only to the extent that such intervention was essential to that mission; they reminded their opponents that the prince was himself an officer of God and that integration through persuasion and voluntary collaboration was a possible alternative to integration by authoritative fiat; they safeguarded both spiritual and temporal interests from the dangers of irresponsible absolutism by balancing normal autonomy with systems of reciprocal checks. Their principles were not a complete answer to the medieval problem of church and state relationships: at best, they could guide and test but not dictate solutions. But the moderate dualists should at least be given credit for never losing sight of the conditions of their problem. And if their systems provided no institutional resolution of final conflict but left the decision, in effect, to the reason and conscience of Christendom, is there, aside from force, another way in which such ultimate questions can ever be resolved?

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If one remembers that the medieval controversy over *regnum* and *sacerdotium* was essentially a controversy over the best structure of authority within a single society, one can find another sort of interest in the principles evolved in the course of the debate. For the problem of reconciling necessary diversity and necessary integration in the structure of government remains a permanent theme of political speculation. For that speculation, the medieval monists suggest the principle that the implicit relations of values within a society should be explicitly reflected in an integrated policy backed by a concentration of coercive force. The dualists, on the other hand, suggest principles dealing with the conditions of integration itself: that an agency seeking higher values can properly control another only in so far as the values sought by the lower agency are intrinsically subordinate to the higher; that distinct functions within a society require not only distinct agencies but agencies with sufficient autonomy to secure the continuity and effectiveness of their programmes; that no office has a claim to authority greater than that which its function requires; that separation of powers, coupled with some mutual checks, is a valuable safeguard against the perversion of concentrated power; and finally, that there can be no real integration of diversity into unity except through the consensus of those who can effectively defend all the varied considerations that must be taken into account.

There is no direct continuity between the medieval dispute over the relations of *regnum* and *sacerdotium* and the speculation out of which the principles of modern constitutionalism have painfully been born. But the parallels have their own interest. And, in the long perspective of history, the medieval conflict was of the utmost importance. Though the individual was not the centre of discussion, the debate involved the highest values of human nature; and each side became in a sense the champion of human freedom against the other, since neither was willing to risk the submergence of what it valued by permitting the dominance of a single aim.

## Honorius Augustodunensis

[Honorius Augustodunensis is one of the most mysterious of medieval figures. Although his name is attached to some thirty-eight theological and

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other works, nothing is certainly known of him except that he flourished at the time of the emperor Henry V and that most of that time he spent in southern Germany. He was presumably a Benedictine monk and may have been a native of Augsburg.

His *Summa Gloria*, written in the later phase of the investiture controversy, is typical of its period in its methods rather than its thesis; it is a rather hazy anticipation of the later theory of the derivation of secular from spiritual power. The following passage is translated from the text in *MGH, Libelli de Lite*, vol. III, pp. 29-80.]

### 1. *That even as the spiritual excels the secular, so the priesthood excels the kingship*

Since the body of the faithful is divided into clergy and people, and since the clergy are assigned to the speculative life, but the people to the practical life, and since the one part is often called spiritual while the other is called secular, and since the one is governed by the sacerdotal rod, the other by the regal, many persons often inquire whether the priesthood ought rightly to be preferred in dignity to the kingship, or the kingship to the priesthood. To this question I might indeed be able to answer briefly that as the spiritual is preferred to the secular, or as the clergy excels the people in rank, so the priesthood transcends the kingship in dignity. But to the inexpert and those who are blinded by mere secular knowledge nothing seems certain unless it is confirmed by many Scriptural testimonies. Whence, that this question may be discussed more plainly, the root of the problem to be solved may be carefully examined from the beginning of the world.

### II. *Adam prefigures Christ*

The first earthly Adam, created from clean earth, bore the image of the second celestial Adam, Who took flesh from a clean virgin. Adam begot two sons by his wife, because Christ was to beget clergy and people by His bride the church. For each son prefigures one order in his office.

*Abel represents the priesthood.* For Abel, who was a shepherd of sheep, typified the priesthood. . . . He was killed by his brother, because the priesthood is often oppressed by the kingship.

*Cain represents the kingship.* Moreover Cain, who cultivated the countryside and built a city in which he ruled, typified the kingship. We read that the Lord had no respect for his offerings because, as it is



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said, he had improperly usurped for himself the office of his brother. How much, therefore, the priesthood excels the kingship in excellence the Lord most evidently declares when He praises Abel the priest and approves his sacrifice but denounces Cain the king and rejects his offerings. . . .

### vi. *Noah prefigures Christ*

Noah also, who ruled an ark full of diverse animals among the waves, typified Christ, Who rules His church crammed full of diverse kinds of people among the waves of time.

*Shem represents the priesthood.* His two sons, Shem and Japheth, most evidently bear the image of the priesthood and the kingship, and typify clergy and people. For Shem is said by the learned to have been Melchisedech, who is described as priest of the Most High; who also, as we read, was king of Salem, since at that time the ruler of any city was called king; who also is described as the firstborn, because in him true priesthood began.

*Japheth represents the kingship.* Moreover the Roman empire has been found to have proceeded from Japheth. . . .

### x. *That Moses did not appoint a king, but a priest*

But now Moses, with the light of law, came to the forefront and cast out the darkness from within our minds. Leading the people of God out of Egypt, he established the Law and rights for them and appointed to govern them not a king but a priest; and the priesthood of the Law originated with his brother Aaron. Therefore, from the time of Moses to the time of Samuel, the people of God were ruled not by kings but by priests; and the judges, who seem to have been over the people in secular affairs, were controlled in all things by the decrees of the priests.

### xi. *That Saul was subject to Samuel*

Moreover, when the people had refused to bear the mildness of priests and had decided to experience the greatness of kings, Samuel, prophet and priest, by divine command anointed a king for them and at the same time wrote the law of kingship. And the king obeyed Samuel in all things which befitted divine law. Likewise Samuel

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also obeyed the king in all things which belonged to the right of the kingship. . . .

### xiv. *That priests once ruled the people alone*

Moreover, from the time of the Babylonian exile only priests ruled the people of God, because the kingship had totally ceased, until He came in the flesh . . . to Whom the sceptre of both kingship and priesthood was restored. Thus the kingship was frequently altered, but the priesthood remained always unimpaired, though sometimes disturbed. . . .

### xv. *That Christ did not appoint a king but a priest*

The Lord Jesus Christ, true king and priest according to the order of Melchisedech, established laws and rights for His bride the church, and for her governance instituted not a kingship but a priesthood. And He set the Apostle Peter at the head of the priesthood and said to him, 'Thou art Peter, and upon this rock I will build My church, and the gates of hell shall not prevail against it. And I shall give thee the keys of the kingdom of heaven, and whatsoever thou shalt bind on earth shall be bound in heaven, and whatsoever thou shalt loose on earth shall be loosed in heaven' [Matthew 16:18, 19]. This power of the priesthood Peter received from the Lord; this same power he left to his successors. Therefore, as from the time of Moses to that of Samuel only priests were over the people of God, so from the time of Christ to that of Silvester only priests ruled the church of God, and they established it with the best laws and customs and excellently taught it the way to the eternal fatherland. But kings everywhere attacked it and attempted in every way to turn it from the worship of the true God. . . .

### xvi. *Whence the Christian empire*

Moreover, when the stone, cut without hands from the mountain [Daniel 2:31, 45], rejected by the builders of the wall of iniquity, but chosen by God and raised to the head of the corner [Matthew 21:42], had grown into a great mountain and filled the whole earth with its greatness, it soon changed the times and transformed kingdoms, and the highest of kingdoms began to bend its knees before Christ, and the citadel of empire bowed before the church. For the God of peace, the

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High Priest, changed the time of persecution to a time of peace, and the great King over all gods transformed the rebel empire of the pagans into a Christian kingdom.

### xvii. *That Silvester crowned Constantine king*

Therefore Constantine, prince of the princes of the kingdom, was converted by Silvester, prince of the priests of the church, to the faith of Christ, and the whole world was clothed with the new rites of the Christian religion. And Constantine set the crown of the kingdom on the head of the Roman pontiff, and decreed by imperial authority that in the future no one should become Roman emperor without apostolic consent. This privilege Silvester received from Constantine, this same privilege he left to his successors. And since the supreme charge of the priesthood and the kingship rested on Silvester's decision, this man, full of God, understanding that rebels cannot be subdued to priests by the sword of the word of God, but by the sword of the spirit, associated this same Constantine with himself as his fellow-worker in the fields of God and as defender of the church against pagans, Jews, and heretics. And he also entrusted to him the sword, that he might punish evildoers, and set on his head the crown of the kingdom, that he might reward the good.

### xviii. *That the church has constituted kings for herself*

Thus began the church's custom of having kings or judges for secular judgments, to repel with armed force pagans who infest the church or other enemies who attack it, and to subdue to the church by fear of punishment those within the church who rebel against divine laws. To kings, however, only secular judgments belong. Thus when certain bishops brought accusation against their fellow-bishops before Constantine the Emperor, he, knowing that he had no jurisdiction in the case, answered: 'Go, because you belong to Christ, and settle this affair among yourselves. I will not be your judge' [*Pseudo-Isidorian Decretals*]. Therefore, inasmuch as the soul, which gives life to the body, is nobler than the body, and as spiritual things, which justify secular things, are of greater dignity than secular things, so the priesthood is of greater dignity than the kingship, which it establishes and ordains. . . .

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### xxv. *Of the office of the king*

Moreover, Paul sets forth the office of the king as judge. 'He is a minister of God to thee for good,' he says. 'But if thou doest that which is evil, be afraid. For he beareth not the sword in vain,' but is obeyed for this reason: that he may punish the wicked. 'For he is a minister of God, an avenger in wrath to him who does evil' [Romans 13:4]. What could be more plainly said? The king is a minister of the church, that he may suppress the rebels; he is the avenger of the wrath of God, that he may punish the impious.

### xxvi. *That man is preferred not to man but to beasts*

For God did not set the first man over men but over beasts and brute animals, because judges are established over those who live irrationally and bestially only in so far as by fear they may recall them to the ways of mildness innate in human beings. Wherefore also God through Noah set Shem and Japheth over the posterity of the sinning son, because He subjected sinners to the priesthood and the kingship. Wherefore in the Gospel also, when the disciples said, 'Lord, behold, here are two swords' [Luke 22:38], He confirmed these words by His authority, showing that two swords are necessary for the government of the church in the present life: the one spiritual, namely, the word of God, which the priesthood uses for the wounding of sinners; the other material, which the kingship uses for the punishment of those who are hardened in evil deeds. For it is necessary that the royal power subjugate with the material sword those rebels against the law of God who cannot be corrected by the sacerdotal stole.

## York Tractates

[The anonymous York Tractates also present arguments that were not typical of the investiture controversy, though their roots struck deep in early medieval thought. The following extract is taken from the fourth tractate, *De Consecratione Pontificum et Regum* (text in *MGH, Libelli de Lite*, vol. III, pp. 662 ff. at pp. 663-668 *passim*.) It was apparently written in 1100 or 1101 in defence of the rights of Henry I of England, from whom Anselm had refused to accept investiture as archbishop of Canterbury.]



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By divine authority and also by institution of the holy fathers, kings are ordained in the church of God and consecrated at the holy altar with sacred unction and benediction, that they may have authority to rule the Christian people, . . . which is the holy church of God. Is the church of God anything else than a congregation of believing Christians living together in one faith, hope, and charity in the house of God? Therefore kings receive in their consecration authority to rule this church, that they may rule it, and confirm it in judgment and justice, and administer it according to the discipline of Christian law; for they reign in the church, which is the kingdom of God, and reign there together with Christ, for this purpose: that they may rule, protect, and defend it. . . . Moreover, the episcopal order is instituted and consecrated with sacred unction and benediction for this purpose: that it may rule the holy church according to the form of doctrine given it by God Himself. Therefore the blessed Pope Gelasius says as follows: 'There are two powers by which this world is principally ruled: the sacerdotal authority and the royal power' [*Decretum*, c. 6, di. 96]. By 'this world' he means the holy church, which is a wayfarer in this world. In this world, therefore, the sacerdotal authority and the royal power have the principate in sacred government.

Now some men divide this principate in the following way, saying that the priest has the principate of ruling souls, but the king that of ruling bodies, as if souls could be ruled without bodies and bodies without souls, which can by no means be done. For if bodies are well ruled it is necessary that souls also be well ruled, and *vice versa*, because both are ruled for the same purpose: that in the resurrection both may be saved together. However, if the king had only the principate of ruling the bodies of Christians, would he not have the principate of ruling the temple of God, which is holy? For the apostle says, 'Do you not know that your bodies are temples of the Holy Spirit?' [I Corinthians 6:19]. . . . For, as the blessed Ambrose says, 'This is the reason why the bodies of Christians are sanctified in baptism and consecrated with sacred unction, and after unction garbed in a mystic vestment, that they may acquire both regal and sacerdotal dignity.' Since these things are so, it is evident that the king has the principate of ruling those who have the sacerdotal dignity. Therefore, the king ought not to be excluded from the government of the holy church: that is, of the Christian people; because thus the kingdom of the church would be

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divided and made desolate. . . . And the bodies of Christians also would be badly ruled, if the regal power were separated from the church. Thus the holy fathers and the apostolic pontiffs, understanding this through divine providence, consecrated kings for the protection of the holy church and the defence of the catholic faith, because if gentiles and heretics had not been coerced by regal power, they would have brought the church and the catholic faith to confusion and nothingness. But Christian kings have repelled the gentiles from the church and have condemned heretics and eradicated their perverted doctrines deep within the bosom of the church; for they reigned together with Christ—or rather, in the kingdom of Christ they administered the Christian laws. For these things could not be done by sacerdotal power alone, and therefore the kingly power was necessary to the sacerdotal, that it might protect and defend it, and that the peace and security of the church might remain inviolate. In this, therefore, these two persons, namely the priest and the king, seem to represent Christ and bear his image.

For, as the blessed Augustine asserts in the first book of his *De Consensu Evangelistarum*, [ch. 3, sec. 5]: 'Our Lord Jesus Christ, the one true King and true Priest, has shown among our forefathers these two persons, each commended as having borne His likeness: the one for our rule, the other for our expiation.' And also we read in the Old Testament that these two persons were consecrated with the unction of holy oil and sanctified by divine blessing to this end: that they should bear the likeness and office of Christ in ruling His people and should present His image in the sacrament. Therefore, king and priest have a common unction of holy oil and spirit of sanctification and virtue of benediction, and the common name of God and Christ, and something in common to which that name deservedly applies. . . . The priest prefigured one nature of Christ: that is, Christ as Man; the king prefigured the other: that is, Christ as God. The latter, the higher nature by which He is equal to God the Father; the former, the lower nature by which He is less than the Father. . . .

Now we come to the New Testament, because in it also priests and kings are sanctified with the holy oil and consecrated with the chrism and the divine blessing. I think that what was said above of the Old Testament can be said also of the New, since they have more certainly and more truly been made sharers of the divine grace and the divine

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nature. For both priests and kings are one with God and His Christ; they are very Gods and Christs by the adoption of the Spirit, and in them also speaks Christ and the Holy Spirit; and in them He fulfills and performs His office; in them He hallows and reigns over and rules His people. Whence each is in the Spirit both Christ and God, and each in his office is the figure and image of Christ and God. The priest, of the Priest; the king, of the King. The priest, of His lower office and nature: that is, of His humanity; the king, of the higher: that is, of His divinity. For Christ, God and Man, is the true and highest King and Priest. He is King, but from the eternity of His divinity, not made, not created, not below or diverse from the Father, but equal and one with the Father. But He is Priest from His assumption of humanity, made according to the order of Melchisedech and created, therefore, lower than the Father. . . . Hence, therefore, it appears that the royal power in Christ is greater than the sacerdotal power, and higher, in proportion as His divinity is greater and higher than His humanity. Wherefore, also, some think that likewise among men the royal power is greater and higher than the priestly, and the king greater and higher than the priest, as an imitation and emulation of the better and higher nature or power of Christ. Wherefore, they say, it is not contrary to the justice of God if the sacerdotal dignity is instituted through the regal and subjected to it, because even so it was done in Christ: He was made Priest through His own royal power and through His priesthood was subjected to the Father, to Whom through His kingship He was equal. But if anyone says that a priest is also a king—for everyone who rules can rightly be called a king—it would still seem better that the lesser king be instituted through the higher king. And those who hold this opinion can say that in the language of the holy benediction the king is called ‘prince above all.’

Yet, although king and priest have certain common charismata of privileges and the same grace, they also have their own diverse offices. For though in ruling they seem to have a common grace, yet in certain respects it is applied differently to priests and kings, and each has a different grace in carrying out his ministry.

But if the priest is instituted through the king, he is not instituted through the power of man but through the power of God. Whence also the king is God and Christ, but through grace, so that, whatever he does, he does it not simply as man, but as made God and through

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grace. Or rather, He Who by His nature is God and Christ does this through His vicar, through whom He fulfills His office.

But now let us see what the king confers on the man who is to be created bishop by the prerogative of the pastoral staff. I think that he does not confer on him the order or right of priesthood, but what pertains to his right and reign: namely, the control of earthly things, and the guardianship of the church, and the power of ruling the people of God, which is the temple of the living God and the holy church, bride of our Lord Christ. . . .

### Thomas Aquinas

[The following passage is translated from Aquinas's *Commentum in IV Libros Sententiarum Magistri Petri Lombardi* (1253-1255; text in *Opera Omnia* . . . , Paris, 1873, vol. VIII), bk. 2, di. 44, q. 2, art. 3. It is the only passage in which Aquinas approached a definition of the jurisdictional relations of the two powers. Up to the last, abrupt sentence, it obviously supports the independence of the secular power in all secular matters and excludes the typical thesis of the defenders of the direct temporal power, that kingship as such must be derived from and subjected totally to the church. The last sentence, which seems to interpret the pope as a special case, has been variously interpreted.]

. . . . A superior and an inferior power can be related in either of two ways. Either the lower power is totally derived from the higher; in this case the whole force of the lower is founded on the force of the higher; then, absolutely and in everything, the higher power is to be obeyed rather than the lower; . . . the power of God is related to all created power in this way; in the same way the power of the emperor is related to the power of a proconsul; in the same way the power of the pope is related to all spiritual power in the church, since the diverse grades and dignities in the church are disposed and ordained by the pope himself, whence his power is a sort of foundation of the church, as appears in Matthew 16:[18]. . . . Or, on the other hand, the higher power and the lower power can be so related that both derive from one supreme power, which subordinates one to the other as he wishes; in that case one is not superior to the other unless in those things in which the other has been subordinated to him by the supreme



power, and the higher is to be obeyed rather than the lower in such things only; the powers of bishops and archbishops, which descend from the power of the pope, are related in this way. . . .

. . . . The spiritual and the secular power are both derived from the divine power; and therefore the secular power is under the spiritual only in so far as it has been subjected to it by God: namely, in those things that pertain to the salvation of the soul; and therefore the spiritual power is, in such matters, to be obeyed rather than the secular. But in those things that pertain to civil good, the secular power is to be obeyed rather than the spiritual, according to the saying in Matthew 22: [21], 'Render to Caesar the things that are Caesar's.'

Unless, perhaps, the secular power is joined to the spiritual, as in the pope, who holds the apex of both authorities, the spiritual and the secular.

## Disputatio Inter Clericum et Militem

[The very popular anonymous *Disputatio inter Clericum et Militem* was written in 1296-1302 in response to the assertions of *Clericis laicos*, presumably by a layman. The text used here is that in Schard, *De Jurisdictione* . . . (Basel, 1566), pp. 677-687.]

THE CLERK opened the discussion in the following words: I marvel, good Sir, in how few days the times are changed, justice is buried, laws are overturned, and rights are trampled under foot.

KNIGHT: Those are big words, and I am a layman, and though I learned a few letters as a boy I never got deep enough to understand words so high. And therefore, reverend Clerk, you must use a plainer style if you want to talk with me.

CLERK: In my time I have seen the church held in great honour among all kings, princes, and nobles; but now I see it wretched. The church has been made a prey for you all; many things are exacted from us, none given to us; if we do not give up our property it is stolen from us; our rights are trampled under foot; our liberties are violated.

KNIGHT: It is hard for me to believe that the king, whose council is composed of clerics, is acting unjustly toward you or that your right is perishing.

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CLERK: But indeed we are enduring countless injuries, against all right.

KNIGHT: I should like to know what you call 'right.'

CLERK: By 'right' I mean the decrees of the fathers and the statutes of the Roman pontiffs.

KNIGHT: What they decree, if they decree concerning temporals, may be rights for you; but not for us. For no one can make decrees about things over which he certainly has no lordship. Thus the king of the French cannot make decrees in regard to the Empire, nor the Empire in regard to the kingdom of France. And even as earthly princes cannot decree anything in regard to spirituals, over which they have received no power, so neither can you decree anything in regard to their temporals, over which you have no authority. Thus whatever you have decreed about temporals, over which you have not received power from God, is a waste of time. So I had to laugh recently when I heard that Lord Boniface VIII had just decreed that he is and ought to be over all governments and kingdoms, and thus he can easily acquire a right for himself over anything whatever, since all he has to do is to write and everything will be his as soon as he has written; and thus everything will belong to you, when to decree is nothing more than to wish to have for one's self. Therefore to wish will be the same as to have a right; therefore one need only write, 'I wish this to be mine,' when he wants to have my castle, or my country-house, or my field, or my money and treasure. You can't help seeing, wise Clerk, to what absurdity this argument brings you.

CLERK: You argue cleverly enough, Lord Knight, and slyly produce these arguments against us. . . . But if you want to be a Christian and a true Catholic, you will not deny that Christ is Lord of all things. . . . And who will doubt the validity of the decrees of Him Who, it is certain, is Lord of all things?

KNIGHT: I certainly do not resist divine authority or lordship, since I am and wish to be a Christian. And therefore, if you will show me by various Scriptures that supreme pontiffs are lords over all temporals, then kings and princes must certainly be subject to supreme pontiffs in temporals as well as in spirituals.

CLERK: That can easily be shown from what has been said. For our faith holds that the apostle Peter was instituted plenary vicar of Jesus Christ for himself and his successors. If, therefore, you do not deny that

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Christ, Who is Lord of heaven and earth, can decree in regard to your temporals, you cannot without blushing deny the same authority to the plenary vicar of Christ.

KNIGHT: I have heard holy and most devout men distinguish two periods in Christ, one of humility and the other of authority: of humility up to His passion, of authority after His resurrection, when He said, 'All power is given to me in heaven and on earth' (Matthew 28:[18]). Now Peter was constituted vicar of Christ for the state of humility, not for the state of glory and majesty. For he was not made vicar of Christ for those things that Christ does now in glory, but to imitate those things that Christ did when He was humble on earth, because those are necessary to us. Therefore He committed to His vicar that power which He exercised as mortal man, not that which He received when glorified. And I shall prove this to you by the testimony of those same Scriptures which you quote. For Christ Himself said to Pilate, 'My kingdom is not of this world' [John 18:36], and that He did not come to be ministered unto, but to minister [Matthew 20:28]. This testimony is plain enough to confound anyone who resists it and to break a neck, however stiff. And this likewise: 'A certain man from the crowd said to Jesus, "Master, say to my brother that he should divide the inheritance with me," And He said to him, "O man, who made Me a judge and divider over you?"' (Luke 12: [13, 14]). Therefore you hear clearly that Christ was constituted neither judge nor divider in temporals; therefore in that state of ministry which He accepted, He neither had temporal kingship nor strove after it. Rather, when they ate the multiplied bread, He fled; and in the commission made to Peter He gave him not the keys of the kingdom of earth but the keys of the kingdom of heaven. And it is certain that the priests of the Hebrews were subject to kings and deposed by kings—and may you escape such a fate! And that you may know that the vicar of Christ was given a spiritual kingship and not a temporal kingship or lordship, listen to this equally clear testimony from Paul himself. For he says, 'Every high priest taken from among men is ordained for men in those things that pertain to God,' not to govern an earthly lordship, but 'that he may offer gifts and sacrifices for sins' [Hebrews 5:1]. You see, therefore, that the pontiff is set above others in regard to the things that concern God, since Paul writes to Timothy, 'Let no one warring for God involve himself in secular affairs' [II Timothy 2:4]. . . .

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CLERK: Do you deny, O Knight, that the church has cognizance of sins?

KNIGHT: Far be it from me; for that would be to deny penance and confession.

CLERK: Any injustice is sin, and he who has cognizance of sin has cognizance of the just and unjust. Since, therefore, justice and injustice are characteristics of temporal affairs, it follows that the church should be judge in temporal cases.

KNIGHT: That argument is a sophistry, and its emptiness and weakness ought to be refuted by a similar argument. Hanging robbers and other condemned criminals is a matter of the just and unjust, and of sin too. Therefore by reason of sin the pope ought also to judge concerning blood. But that argument is a feather blown into the air by a light reason. Now it remains to show you, Lord Clerk, how your cognizance of the just and the unjust is related to the judgment of temporal affairs according to human laws, which have settled such matters. But anyone can see what laws these are, and what persons should judge. Therefore it is plain that he who has the right to establish laws, and who has the function of interpreting, explaining, and guarding them, and of making them heavier or milder when it seems expedient, should be the judge and have cognizance of the just and the unjust in accordance with the laws. Therefore, if you exercise a competitive or concurrent jurisdiction by your cognizance of the just and the unjust, you are ploughing with an ox and an ass, contrary to your Scripture; and when the prince says, 'This is just,' the pontiff will say, 'This is unjust.' . . . And I will show you where, according to Paul, your cognizance ought to begin, because the prince by his own right has cognizance of the just and the unjust; and let everyone heed his decision, that it may be maintained, and obey him as it is commanded (Deuteronomy 17:[10, 11]). If, however, anyone, swelling with pride, does not obey his command, and if the prince whose was the office of judging does not have power to resist or coerce him, then your jurisdiction begins; because then your admonition comes into play, as the apostle Paul says in the Epistle to Titus, 3:[1]: 'Admonish them to be subject and submissive to princes and powers.' And in the Epistle to the Romans, [13:1]: 'Let every soul be subject to the higher powers.' Also where evil deeds and crimes are manifest, as looting, robbery, and the like, and there is no one willing or able to correct them. For I do not deny



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that in such cases you should and can exercise your authority, but not in regard to the just and the unjust, because of this you have no cognizance and you ought not to put your finger into it. And when the situation is manifest, through the decision of the law or when there is obvious crime, so that no cognizance is necessary, then that matter and form can belong to you; otherwise, if you wish to take cognizance of the aforesaid cases through their connection with sin, nothing will remain but that the courts of princes be closed, and the laws and decrees of princes be silent, and yours alone resound. . . .

CLERK: Ought not temporals to serve spirituals? Therefore temporals ought to be subject to spirituals, and the spiritual power ought to rule the temporal power.

KNIGHT: Truly temporals ought to serve spirituals in the proper way, since they are considered necessary to minister to those who maintain the worship of God. For every people holds this principle as if innate and instinctive, and nature itself has decreed this by natural right: that whatever is necessary should be provided for those who minister to the Creator and celebrate divine things, and the necessities of life should be supplied to them as their honest due. . . . But if you want to know what sort of lordship He offers to His ministers, listen to the words of Christ and His apostle Paul. For Christ said to His disciples when they were sent out to preach, 'The labourer is worthy of his hire' [Matthew 10:10]. And Paul says of himself and the other apostles, 'Who ever goes to war at his own wages?' [I Corinthians 9:7]. . . . Behold to what Christ and His apostle Paul compare you. To labourers and wage-earners. Are labourers and wage-earners in any way lords of things? You see that temporals are granted you not for lordship but for the sustenance of life and for the expenses of spiritual ministry. . . .

When you argue further that the supreme pontiff is superior in all things, you run into a bad joke. For if, when the pope is created, he is created lord of all things, by like reason to create a bishop will be to create the lord of his territory, and my priest will be lord of my castle, and of me too. . . . Therefore stop talking this nonsense which everybody laughs at and which has been settled by so many texts of Scripture and logical proofs. For we say that in the Old Law priests were not adored by kings, but kings and princes were adored by priests and prophets, and they were summoned to the kings and commanded to

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do what pleased the kings, and when they were occasionally at fault in the public administration of temporals they were reprov'd, as is told in the third book of Kings, [I Kings], chapters 1 and 4.

CLERK: I marvel at what you say: that a king has censured a pontiff in regard to the administration of temporals.

KNIGHT: You excite a sleeping dog, and force me to say more than I had intended.

CLERK: Let the dog be excited, and let him bark.

KNIGHT: Since you do not know how to use the usefulness and patience of princes, I am afraid that after a just bark you will find yourself bitten.

CLERK: What do kings and princes have to do with the administration of our temporals? Let them have their own, and leave ours to us.

KNIGHT: It is our interest in every way. Is it not our interest to worry over the safety of our souls above all things? Is it not our interest to carry out the due rites for our dead fathers, and also to demand such rites? And were not your temporals given you by our fathers, and plentifully provided, for this purpose: that you might entirely expend them in divine worship? But certainly you do nothing with them but apply to your own needs all that with which you ought to fill the bellies of the poor through benefactions and works of charity. Is it not necessary that through holy works of this sort the dead may be freed and the living saved? When you spend these endowments as if they were your own and consume them extravagantly in defiance of the givers' intention and also, in a sense, waste them by misuse, do you not wrong the living and the dead, and damnably steal from them? Should not the wage be taken away from the soldier who refuses to earn it? And certainly a vassal who does not fulfill his service deservedly loses his fief. And, to silence you on this question and because it is up to us to worry over this and find a remedy, listen to the very strong and very clear chapter of the Holy Scriptures. For we read of King Joash (II Chronicles 24:[2]), 'And he did that which was right in the sight of the Lord, all the days of Jehoiada the priest.' And of the same king we read in the twelfth chapter of the fourth book of Kings [II Kings 12:7, 8]: 'King Joash called Jehoiada the high priest, and the other priests, and said to them, "Why repair ye not the breaches of the temple? Therefore take no more money from the people, according to your ordination, but give it up for the restoration of the temple."'

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And the priests were forbidden to take any more money from the people.' You see, therefore, that the Lord praised King Joash, who took care that the oblations should be expended for divine worship according to the intention of the givers: that is, for the restoration of the temple. . . .

CLERK: King Joash did not take goods for himself but for the use of the church; today, however, you take our goods and spend them not for religious uses but for military tumults and warring armies. Thus the example which you cite contradicts your actions and is only a pretext for your violence.

KNIGHT: You always hurt yourself by kicking against the prick of kings. Do you complain when your nephews and kinsmen and other dishonest persons sometimes take away with them some of the goods of the church? But you find it altogether intolerable and injurious when the king gently seeks and graciously accepts something from you for the sake of your safety and for the defence of the church and of your property.

CLERK: O poor me! You take away my skin and my flesh too and call it safety!

KNIGHT: Don't get excited but listen patiently; consider how your neighbours lack goods of their own and cast their eyes on yours. If there were no royal authority, what sort of tranquillity would you have? Would not needy and extravagant nobles when they had used up their own resources turn to yours? Therefore the king's arm is your buttress; the king's peace is your peace; the king's safety is your safety. If this failed, your wealth would be stolen from you or you would lose it through the requirements of your sins, and when your neighbours lay in wait for your wealth, now demanding, now threatening, and laying waste your property, you would be forced to serve them all. Then, when you saw your property ruined, how eager you would be to redeem it and how you would wish that the king's arm should be restored! You see, therefore, that when you hand over a little to the king, you are paying for your own safety, since he saves all your property from being lost. But as you have always been ungrateful for benefits, so you complain of your advantages. But if the king were dead and a hostile army invaded the kingdom, would you not all be ruined by looting and pillaging, and would you not, terrified and awestruck, deserting your homes, flee the barbaric ferocity which

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you would know to be implacable? And would you not lose all—you who now complain at the smallest sums? But if kings and princes are bound to defend you at their own expense and peril, and to expose themselves freely to death for you, while you rest in the shade, feast splendidly, drink merrily, lie on luxurious beds, sleep quietly, and amuse yourselves with sweet instruments, then you are indeed the only lords, and kings and princes are your slaves. And others also risk their lives and fortunes for you. If churchmen are allowed to rest in peace, it is not much to ask that they contribute their wealth in lieu of their persons. You say that this is hard; but you will not be silent until you have been convinced in the accustomed way, and refuted by the Divine Scriptures which you cannot resist. . . .

CLERK: If things once given to God can be taken back, then cannot all vows be broken?

KNIGHT: This is not taking back things given to God but applying them to the uses for which they were given. For what has been given to God was thereby dedicated to pious uses. But what could be more holy than the safety of the Christian people, and what more precious to God than to keep enemies, robbers, and murderers away from the Christian people, and to buy peace for Christian subjects? Therefore, when the goods of the church are spent for such purposes, they are, in fact, restored to the uses to which they were dedicated. . . .

## Aegidius Romanus

[The following passages from the *De Ecclesiastica Potestate* written by Aegidius Romanus in 1302 (text ed. R. Scholz, Weimar, 1929), bk. 1, chs. 4 and 5, read together with bk. 2, chs. 7 and 12, tr. above, pp. 112-115, give the heart of his argument for the thesis of the plenitude of papal power in temporals.]

### CHAPTER IV

. . . . From the order of the universe we can clearly show that the church was established over peoples and kingdoms. For, according to Dionysius [Pseudo-Dionysius], *De Angelica Hierarchia*, [ch. 10], the law of divinity is to subdue the lowest to the highest through the intermediate. Therefore, this requires an order of the universe, that the



lowest may be subdued to the highest through the intermediate. For if the lowest were immediately under the highest, as the intermediate are, the universe would not be rightly ordained: which, especially in regard to powers and authorities, is an inadmissible conclusion. And this is evident from the saying of the apostle in Romans 13: [1], when, after saying that there is no power except from God, he immediately adds, 'Moreover, the powers that be are ordained of God.' If, therefore, there are two swords, the one spiritual and the other temporal (as is apparent from the saying of the Gospel [Luke 22: 38], 'Behold, here are two swords,' to which the Lord at once adds, 'It is enough,' because these two swords suffice in the church), these two swords, these two authorities and powers, are necessarily from God; because, as has been said, there is no power except from God. It follows, moreover, that they must needs be ordained; because, as we stated, the powers that are from God must be ordained. Now they would not be ordained unless one sword were subjected through the other and placed under the other; because, as Dionysius said, the law of divinity which God gave to all created things . . . requires this: that all be not immediately subjected to the supreme, but the lowest through the intermediate, and the lower through the higher. Therefore the temporal sword, as inferior, is to be subjected through the spiritual sword as through the higher, and the one is to be subordinated to the other as the lower to the higher.

But someone might say that kings and princes ought to be subjected in spiritual and not temporal matters, and that therefore this doctrine ought to be understood to mean that kings and princes are spiritually but not temporally under the church. And he might also argue that the church has received temporals themselves from the temporal lordship, as in the case of the donation and grant which Constantine made to the church. But anyone who says this does not grasp the force of the argument. For if kings and princes were only spiritually subject to the church, sword would not be under sword, temporals would not be under spirituals, there would be no order of powers, the lowest would not be subjected to the highest through the intermediate. Therefore, if these powers are ordained, the temporal sword must be under the spiritual, kingdoms must be under the vicar of Christ, and, as a matter of right—though some may act contrarily as a matter of fact—the vicar of Christ must have dominion over temporals themselves.

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### CHAPTER V

Among the wise there can be no doubt that the sacerdotal power precedes the royal and earthly power in dignity and nobility. We can demonstrate this in four ways: first, from the giving of tithes; second, from benediction and sanctification; third, from the origin of the authority itself; fourth, from the government of things.

The first proof proceeds as follows. By divine law and divine institution we are all bound to give tithes, so that every earthly power, as earthly and temporal, is bound to give tithes to the spiritual power. Moreover, such tithes are given in recognition of servitude, as each recognizes himself to be the servant of God. Therefore, even as inferiors pay tribute to a superior in recognition of the fact that what they have, they have and possess from their superiors, so also we have received from God what we have and possess, according to the saying in I Corinthians 4: [7], 'What have you that you have not received from Him?' It is fitting, therefore, that we pay tribute for all our possessions to God Himself. For God, as other sciences tell us, is rich through Himself; but others are rich from loans. For God has lent us what we have. Wherefore it is not strange nor unreasonable that on this account we are taxpayers and tributaries to God Himself.

Therefore, the earthly and temporal power, as earthly, that is, as receiving the fruits of the earth, and as temporal, that is, as having temporal goods, is tributary and taxpayer to the ecclesiastical power and, recognizing that this power stands in the place of God, ought to give tithes in recognition of its own servitude. Therefore every earthly power is under the ecclesiastical power, and especially under the supreme pontiff, who stands at the apex of the church in the ecclesiastical hierarchy, and to whom all (both kings, as supreme [I Peter 2:13], and everyone else) ought to be subject.

The second proof is based upon benediction and sanctification; and this is the argument used by Hugh [of St. Victor], who says in *De Sacramentis*, bk. 2, pt. 2, [ch. 4], that in the church of God the sacerdotal dignity consecrates and blesses the royal power. If, therefore, as the apostle says in Hebrews 7: [7], he that blesses is greater than he that is blessed, it is established beyond doubt that the earthly power, which receives blessing from the spiritual, is rightly esteemed inferior.

The third proof is based upon the institution of the power itself. And this argument also Hugh mentions in the same passage, saying,

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‘Moreover, that the spiritual power is greater in dignity than the earthly power is manifestly shown in that ancient people of the Old Testament, among whom the priesthood was first instituted by God, but afterwards the royal power was ordained at God’s command through the priesthood.’ Therefore the royal power ought to recognize the superiority of the sacerdotal dignity, as that through which at God’s command it was instituted. And if it be said that not every royal power was instituted through the priesthood, we shall say that any royal power not instituted through the priesthood either is not righteous, and therefore is brigandage rather than authority, or is united with the priesthood, or is successor to a power instituted through the priesthood. For when there were kingdoms of the gentiles, under the law of nature, all such kingdoms were obtained through invasion and usurpation. Thus Nimrod, who, as we read in Genesis 10: [8–10], was the first king, reigning in Babylon, made himself king through violence and usurpation, whence it is said there that he began to be mighty in the land; therefore he acquired the kingship through civil power and not through justice. But according to Augustine, *De Civitate Dei*, [bk. 4, ch. 4], kingdoms without justice are great bands of robbers. Moreover, although such rulers are called kings, they are not kings, but thieves and robbers.

Therefore a kingship not instituted through the priesthood either was not a kingship but brigandage or was joined to the priesthood. For before Saul was instituted through Samuel, as through a priest of God, and set up as king, Melchisedech was king of Salem [Genesis 14:18]. But Melchisedech was a priest as well as a king. Whence it is said [Hebrews 7:1] that he was priest of the most high God. Therefore in this case the kingship was not independent of the priesthood but united with the priesthood, so that the priesthood was more principal than the kingship. But modern kingships are the successors of kingships instituted through the priesthood, so that before these kingships existed there were kingships instituted through the priesthood. And because the earlier facts are examples and mirrors of later facts, all later kingships ought to be traced back to the first kingship, which was instituted through the priesthood at God’s command. . . .

Therefore let kings recognize that they were instituted through the priesthood. And therefore, if we diligently examine the origin and institution of royal power, the fact that it was instituted through the

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priesthood leads to the conclusion that the royal power ought to be under the sacerdotal power and especially under the power of the highest priest.

The fourth proof is based on the government of things. Therefore, if we wish to see which power is under which power, we ought to notice the government of the whole machinery of the world. Now in the government of the universe we see that every corporal substance is governed through a spiritual. Inferior bodies, indeed, are ruled through superior bodies, and the grosser through the more subtle and the less potent through the more potent. Yet every corporal substance is ruled through a spiritual substance, and all spiritual substance through the highest spirit: namely, through God. Whence Augustine says in *De Trinitate*, bk. 3, ch. 4, [sec. 9], that 'certain grosser and inferior bodies are ruled by the subtler and more potent in a certain order; moreover, all bodies are ruled through spirit, and the whole creation through its Creator.' And what we see in the order and government of the universe we ought to copy in the government of the commonwealth and in the government of the whole Christian people. For that same God Who is universal ruler of the whole machinery of the world is special governor of His church and those who believe in Him.

Therefore, if the whole universe, of which God has general care, is so well ordained because inferior bodies are under superior bodies and all bodies are under the spiritual substance, and moreover the spiritual substance itself is under the highest spirit, namely, under God, it is altogether absurd to say that the Christian people and the very church which God has chosen for Himself, without stain or blemish, is not well ordained, and that it is not thus entirely joined and united into a whole, and that the order of the universe, which, as Augustine says in the *Enchiridion*, [ch. 10], is a most beautiful order and wonderful beauty—that that wonderful beauty, that most beautiful order, does not shine forth in the church. Wherefore, even as in the universe itself inferior bodies are ruled through superior bodies and the less potent by the more potent, so in the Christian people and among believers the inferior temporal lords are ruled through their superiors and the less potent through the more potent. And even as in the universe itself every corporal substance is ruled through a spiritual substance, since the heavens themselves, which are supreme among corporal things, and which have influence over all bodies, are governed through spiritual



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substances, namely, through the intelligences that move them, so among believers all temporal lords and every earthly power ought to be ruled and governed through the spiritual and ecclesiastical power, and especially through the supreme pontiff, who holds the apex and the highest rank in the church and in the spiritual power. Moreover, the supreme pontiff is to be judged by God alone. For . . . it is he who judges all and is judged by no one: that is, by no mere man but by God alone.

Therefore, if the earthly power deviates, it will be judged by the spiritual power as by its superior; but if the spiritual power, and especially the power of the supreme pontiff, deviates, it can be judged by God alone. Whence, after saying in *De Sacramentis*, bk. 2, pt. 2, [ch. 4], that the earthly power is judged by the spiritual power, Hugh adds that it, however, was first instituted by God and when it deviates can be judged by God alone. . . .

And if anyone should say that the whole earthly power ought to be under the spiritual in regard to the articles of faith but not in regard to temporal and earthly power, his argument would have no weight, because he who says this does not grasp the force of our reasoning, since bodies, as bodies, are under spirits, even as the movers of bodies, and especially the movers of the superior bodies, are themselves ruled through moving spirits and through the intelligences which move the spheres; so temporal powers, as temporal, and especially the supreme temporal powers, can be judged through the spiritual power and especially through the power of the supreme pontiff, who is the supreme and most sublime spiritual power in the church; inferior temporal lords, if they are at fault, can be judged through temporal lords, but those superior temporal lords can themselves be judged through the spiritual power, since among temporal lords they have no superiors. But the spiritual power, and especially the power of the supreme priest, can be judged by no one but God alone, since no man is superior to it.

### James of Viterbo

[The following selections are translated from the *De Regimine Christiano* (1301-1302) of James of Viterbo, bk. 2, chs. 6 and 7, from the text edited by H. X. Arquillière (Paris, 1926).]

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### CHAPTER VI

. . . . Now the difference between these powers can be deduced from the words themselves, since the one is called spiritual, the other secular or temporal. To understand this distinction, it should be known that the word '*spiritual*' is used in two senses.

For in one sense '*spiritual*' means '*pertaining to the soul*,' which is spiritual in nature, and, in particular, to its rational part; and in this sense sciences and virtues are called spiritual. '*Spiritual*,' in this sense, is the opposite of '*corporal*': that is, '*pertaining to the body*,' or to the soul as it is the form of the body, corresponding to the souls of brutes. And thus some say that the power of the prelates of the church is called spiritual because it is a power over souls and over those things that pertain to the perfection of the soul, and that the power of secular princes is called corporal, because it is a power over corporals and those things that pertain to the body. But this statement is open to question. For the secular power, if it is right and ordained, has as its principal and final purpose the direction and leading of the subjects to a virtuous life, which is primarily a matter of the soul. For all right power among men ought to have as its purpose that purpose to which man is finally ordained. Now the end of man as such is felicity. Thus every right power ought to have as its purpose the felicity of the multitude subjected to it. Moreover, the felicity of man consists primarily in the achievement of virtue; therefore, it pertains to the office of this power to direct men to that end. But because external goods, which subserve the corporal life, are required for felicity and especially for political felicity, therefore government in regard to external things and corporal things, without which the works of the soul are not carried on in the condition of this life, fittingly belongs to its office. Thus, according to this reasoning, it seems that the secular power ought, in principle, to be called spiritual, if the word '*spiritual*' is used in the aforesaid sense, since the virtuous life pertains to the soul, which is spiritual.

But, if we use the following approach, the secular power can be called corporal. For in another sense '*spiritual*' means '*pertaining to the soul not according to nature but according to grace*'; and in this sense, those things which concern grace, and are related to grace in one of the following ways, are called spiritual: either as its opposite, like sin, or as a symbol, or through their effects, or in any other way. And

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because grace raises man above temporal things and makes him a sharer in eternity, since through it man is made in the form of God, therefore the spiritual in this sense is contrasted to the temporal, meaning that which concerns nature and is related to nature in some such way. For nature, in this sense, is temporal, since even the intellect of our soul, which, on account of its abstraction from matter, seems to be withdrawn from time, depends upon time in its operation. In this sense of the word 'spiritual,' therefore, the secular power is not called spiritual but temporal, because it concerns nature whereas the spiritual power concerns grace. . . .

### CHAPTER VII

. . . . The spiritual power is the cause of the temporal as its active principle, and this is true in three ways. First, the spiritual power is the active principle in respect of the temporal in regard to its institution, since the spiritual power instituted the temporal power, as Hugh of St. Victor says [*De Sacramentis*, bk. 2, pt. 2, ch. 4]. But in this connection it should be noticed that there are two apparently contradictory opinions about the institution of the temporal kingship. For some say that the temporal power is from God alone and that in its institution it was in no way derived from the spiritual power. Others, however, say that the temporal power, if it is to be legitimate and just, must either be joined to the spiritual power in the same person or instituted through the spiritual power, and that otherwise, it is unjust and illegitimate. Between these two opinions, a middle ground, which seems more rational, can be found: thus it may be said that the institution of the temporal power derives its existence, materially and inchoatively, from the natural inclination of men, and thus from God, inasmuch as a work of nature is a work of God; however, perfectly and formally it derives its existence from the spiritual power, which is derived from God in a special way. For grace does not abolish nature, but perfects and forms it, and likewise that which pertains to grace does not abolish that which pertains to nature, but perfects and forms it. Whence, since the spiritual power pertains to grace, but the temporal power to nature, it follows that the spiritual power does not destroy the temporal power but forms and perfects it. All human power, indeed, is imperfect and unformed unless it is formed and perfected through the spiritual power. Now this formation consists in

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approval and ratification. Whence human power among unbelievers, however much it is derived from natural inclination and thereby is legitimate, is still unformed, since it has not been approved and ratified by the spiritual power. And for fuller explanation of this point it should be known that human or temporal power needs a double formation in order to be perfected in accordance with the nature of its potency. For it needs the formation of faith, since there is no true virtue without faith, even as Augustine says: 'Where the knowledge of the highest, unchanging truth is lacking, there is false virtue even in the best morals' [Prosper d'Aquitaine, *Sententiae ex Augustino delibatae*, 106]. Thus no power is altogether valid without faith—not that it is null and entirely illegitimate, but that it is not true nor perfect: even as the marriage of unbelievers is not perfected nor confirmed, although it has some validity and legitimacy.

Temporal power also needs the formation of ratification and approval by the spiritual power. For even where faith is present, temporal power is not formed and perfected unless it is approved and ratified by the spiritual power. No secular power, therefore, is true and perfect unless it is approved and confirmed through ratification by the spiritual power. And therefore kings are anointed, not only in token of the sanctity which is required in them, but also in token of approbation and formation; and kings are anointed by pontiffs because temporal power is perfected and formed by the spiritual power; and therefore the spiritual power can be called, in a sense, the form of the temporal, in the same sense as light is called the form of colour. For colour has something of the form of light, yet it has such feeble light that unless there is present a more excellent light by which it may be formed, it can move the vision only virtually, not inherently; and in the same way temporal power has something of the validity of authority, since it is based on human law which is derived from nature, but yet it is imperfect and unformed unless it is formed by the spiritual power; and in this sense it is said to be instituted by the spiritual power. Thus Hugh of St. Victor says that in the church of God the sacerdotal dignity consecrates and sanctifies the regal dignity by benediction and forms it through institution. . . .

And this is further made clear by the following argument. The dominion of man over man is based on human law, which is perfected by nature. However, the dominion of a Christian over Christians is



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based on divine law, because it is founded in grace. For grace, not nature, makes Christians. And because divine law rests in the vicar of Christ, therefore to him belongs the institution of Christian kings, and of temporal power over Christians as such. Thus the temporal prince within the church has power over men by human law, but over Christians by divine law. Therefore, since faith gives form to nature, the temporal power is instituted through its formation by the spiritual power, and is formed through its institution by the spiritual power, and is approved and ratified by the spiritual power. Thus the temporal power ought not to use laws that have not been approved by the spiritual power.

We see, therefore, in what way the spiritual power has the nature of an active cause in respect of the temporal power, in regard to its institution.

Secondly, it has the nature of an active cause in respect of the temporal power in regard to judgment. For, since it institutes the temporal power, the judgment of the temporal power also belongs to it. Also, since means to an end are judged in relation to the end, the spiritual power, which is directed toward the ultimate and supreme end of man, has the right to judge the temporal power, which is directed toward an inferior end, ordained to the end of the spiritual power. For just as the science of the Holy Scripture judges any physical science, so the spiritual power judges any temporal power. And even as the judgment of the senses, when at fault, is corrected by the judgment of the intellect, which is superior in the hierarchy of cognitive powers, so the action of the temporal power, when found to deviate from rectitude, is corrected by the spiritual power as by a superior. Thus Hugh of St. Victor says that the spiritual power has the function both of instituting the earthly power that it may exist, and of judging it, if it has not been good.

For it has the function of judging the temporal power because in case of crime and fault it can and ought to correct and direct it, to punish it and to impose on it a penalty not only spiritual but also temporal, even to the point of abolishing it, if the quality of the fault so requires. This does not mean the elimination of the power itself, because thus the order of powers would be destroyed, but that of the man who wrongly uses the power given to him. Thus when it is said that the power is abolished it means that the power is taken from him

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who has it. For, as the Gloss [*Glossa Ordinaria*] on Romans [13 :1]—‘Let every soul be subject to the higher powers’—says, ‘the term “power” sometimes means the power that is given to someone by God, and sometimes the man who has the power’; therefore the power itself, which is good and ordained to good, is not abolished or condemned, but he who has the power is removed when he uses it unduly. For even as the temporal power over Christians is conferred on someone through the agency of the spiritual power, so through the same agency he can be deprived of this power. Moreover, no temporal prince is exempt from this judgment over the temporal which is competent to the spiritual power, since temporal power generally, in whomever it is found, is subject to spiritual judgment, and especially to the judgment of him in whom is the fullness of spiritual power: namely, the Roman pontiff. For although it is fitting that other pontiffs judge the temporal power (for a bishop can excommunicate a king as a member of his diocese), yet the supreme pontiff has full judgment over all princes in accordance with every kind of judgment which has been given to the spiritual power.

In the third place, the spiritual power has the nature of an active cause in respect of the temporal power in regard to command. For even as, among the arts, the art to which belongs the best and principal end commands the art to which belongs a secondary end, subordinate to the principal end, so also it happens in the relation between powers. Thus the spiritual power, to which belongs the chief end, supernatural beatitude, is so related to the temporal power, to which belongs the secondary end, natural beatitude, that it commands it, and uses it in its own service, and also uses all the things which are subject to and belong to the temporal power; because natural things ought to be subservient to the rule of those things that pertain to grace, and to be moved and directed thereby, and temporal things ought to be subservient to spiritual things, and human things to divine. Thus it follows that the spiritual power has command over all temporal things inasmuch as they were created to serve and be ordained to spiritual things; and the temporal power, by divine law, is subject in all respects to the spiritual power inasmuch as it is ordained to, and for the sake of, the spiritual. Thus, therefore, the spiritual power is related to the temporal power in the same way as the architectonic art is related to a subordinate art, and in the same way as the Holy

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Scripture is related to sciences discovered by man, which it uses in its service for the manifestation of its truth. Thus the temporal power is summoned to aid the spiritual, and when it is summoned it should bring aid and render obedience.

### John of Paris

[The following passages are translated from the *De Potestate Regia et Papali* (1302-1303), chs. 5, 13, 17; the text used was that ed. Jean Leclercq, *Jean de Paris et l'ecclésiologie du xiii<sup>e</sup> siècle* (Paris, 1942), appendix. In ch. 4, not translated here, John argued that kingship was prior in time to the priesthood of Christ and contemporary in origin with priesthood in the broader sense; ch. 5 will be recognized as based on Aquinas's distinctions in his commentary on the *Sentences*, bk. 2, di. 44, q. 2, art. 3; the selection from ch. 17 is a specific answer to an argument made by James of Viterbo in the passage tr. immediately above.]

#### CHAPTER V

From what has just been said, one can easily see which is first in dignity, the kingship or the priesthood. For what is later in time is customarily first in dignity, as the perfect in comparison with the imperfect, and the end in comparison with the means. And therefore we say that the priestly power is greater than the royal power and excels it in dignity, since we always find that that to which belongs the ultimate end is more perfect than, and better than, and gives direction to that to which belongs the inferior end. Now the kingship is ordained for this purpose: that the associated multitude may live according to virtue. . . . And it is further ordained to a higher end, which is the enjoyment of God; and guidance to this end is the charge of Christ, Whose ministers and vicars are the priests. Therefore the priestly power is of greater dignity than the secular power. And this is commonly conceded. . . .

However, if the priest is, in an absolute sense, greater in dignity than the prince, it does not follow that he is the greater in all respects. For the lesser secular power is not related to the greater spiritual power as originating from it or being derived from it, as, for example, the power of a proconsul is related to the emperor, who is greater than he

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in all respects and from whom his power is derived. But it is like the power of the head of a household in comparison with the power of a commander of soldiers, neither one of which is derived from the other, but both of which are derived from some superior power. Therefore the secular power is greater than the spiritual in some respects: namely, in temporal affairs; and in regard to those affairs it is not subjected to the spiritual power in any way, since it does not owe its origin to the spiritual power, but both owe their origin immediately to one supreme power: namely, the divine; therefore the lower is not subjected completely to the higher but only in those respects in which the supreme power has subordinated it to the greater. For who would say that because a teacher of letters or instructor in morals ordains all the members of a household to a nobler end (namely, to the knowledge of truth), therefore a physician, who looks after the lower end (namely, the health of the body), should be subjected to him in the preparing of his medicines? For this is not fitting, since the head of the household, who established them both in the house, did not subordinate the physician to the tutor in this respect. Therefore the priest is greater than the prince in spiritual affairs and, conversely, the prince is greater than the priest in temporal affairs, although in an absolute sense the priest is the greater, inasmuch as the spiritual power is greater than the temporal. . . .

### CHAPTER XIII

Having explained, [in ch. 12, the powers involved in the nature of the priesthood], we should now discover what bishops and priests can do in temporals and over princes on the basis of the powers entrusted to them. And it seems that none of the aforesaid powers has given them direct power in temporals, nor temporal jurisdiction, except in so far as they have the right to take what is necessary to sustain their lives. And this can be demonstrated through analysis of the individual powers.

Certainly it is evident in regard to the first power, which is the power of consecration, since this is entirely spiritual. . . .

The second power, which is the power of the keys in the court of conscience, is entirely spiritual. Whence, commenting on John 20: [22, 23], 'Receive the Holy Spirit,' etc., Chrysostom says, 'The spiritual power was granted only for the remission of sins'; nor can the pope



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thereby do anything in temporals, except when in the court of conscience he induces the penitent to make restitution, and imposes this on him as he does other penances, including corporal ones. From this it appears, however, that no one is subject to this power absolutely but only under certain conditions: namely, if he has sinned and is penitent. And if the sinner does not wish to obey, he cannot coerce him by the aforesaid power like a secular judge, who can impose damages or amends even on the obdurate and can enforce his command.

The third power or authority, which is the power of preaching, is altogether spiritual and involves no lordship at all, since it is not a power of lordship but of instruction. . . . Yet, indirectly, through this authority to teach, bishops and priests have power in temporals, inasmuch as they induce men to penitence, and to the payment of debts, and to the distribution of temporal goods in accordance with the requirements of the order of charity.

In regard to the fourth power, which is judicial power in the external court, all the difficulty arises. Therefore it should be understood that this power has two subdivisions: namely, the authority to define or take cognizance . . . and the power to coerce . . . , for these are the two keys in the external court. In regard to the former, it should be realized that the ecclesiastical judge, as an ecclesiastic judging in the external court, has no regular cognizance except of spiritual cases, which are called ecclesiastical, and has no cognizance of temporals except by reason of fault. But if the concept of fault is analysed, this case should not be considered an exception to our rule, since the church has cognizance of no fault except as it is reduced to a spiritual or ecclesiastical matter. For there are two kinds of sin in temporals. One kind is the sin of contradiction or error, as when it is maintained that usury is not a mortal sin, or that one can claim another's property by any title whatever, or when someone doubts whether such things are permitted or forbidden by God. Since all such questions are determined by divine law, which is the law used by the ecclesiastical judge, there is no doubt that the cognizance of such cases belongs only to the ecclesiastical judge. The other kind of sin in temporals is that of retaining something that belongs to another, or of using another's property as one's own; and the cognizance of such cases belongs only to the secular judge, who judges according to human, or civil, laws, in accordance with property rights and legal claims. . . . And thus only the

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secular judge has cognizance of, or jurisdiction over, such sin in temporals, and not the ecclesiastical judge, unless perhaps this power has been granted or permitted him from some source other than Christ. . . .

In regard to the power of correction, or ecclesiastical censure, it should be known that, directly, it is only spiritual, since it can impose no penalty in the external court except a spiritual penalty, unless conditionally and indirectly. For, although the ecclesiastical judge has the function of bringing men back to God, and withdrawing them from sin, and correcting them, yet he has this function only in accordance with the method given him by God, which is by cutting the sinner off from the sacraments and from the communion of believers, and penalties of this sort which are proper to ecclesiastical censure. I said that temporal penalties are not imposed 'unless conditionally': that is, on condition that the sinner wishes to repent and to accept a pecuniary penalty; for the ecclesiastical judge cannot, by reason of the fault, impose a corporal or pecuniary penalty as does a secular judge, but only if the sinner is willing to accept it. For, if he is not willing to accept it, the ecclesiastical judge coerces him through excommunication or some other spiritual penalty, which is the utmost that he can inflict; nor can he do anything further. I said also 'indirectly,' because if a prince were a heretic and incorrigible and contemptuous of the ecclesiastical censure, the pope could so influence the people that he would be deprived of his secular honour and be deposed by the people. And the pope could do this in the case of an ecclesiastical crime whose cognizance belonged to him, by excommunicating all who obeyed the sinner as a lord; and thus the people, and indirectly the pope, would depose him. Thus also, on the other hand, if the pope were criminous and brought scandal on the church, and were incorrigible, the prince could excommunicate him indirectly, and depose him indirectly: namely, by warning him through himself and through the cardinals. And if the pope were unwilling to yield, the prince could so influence the people that he would be compelled to yield or be deposed by the people; because the emperor could, by hypothecation of property or by bodily penalties, prevent each and everyone from obeying the pope. In this way each can depose the other. For both pope and emperor have jurisdiction universally and everywhere; but the one has spiritual, the other temporal jurisdiction.

Yet on this point a distinction ought to be made. When the king is

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at fault in spiritual matters, namely, in the faith, in marriage, and the like, the jurisdiction of which belongs to the ecclesiastical judge, the pope first warns him and then, if he is found to be pertinacious and incorrigible, can excommunicate him, but cannot go further except indirectly, . . . as was said. But when the king is at fault in temporal matters, the cognizance of which does not belong to an ecclesiastic, then not the pope but the barons and peers of the realm have in the first instance the function of correcting him; and if they cannot, or dare not, they can invoke the help of the church; and the church, having been requested by the peers to give aid to the right, can warn the prince and proceed against him in the aforesaid way.

Similarly, if the pope were at fault in temporal affairs, the cognizance of which belongs to the secular prince—for instance, if he should lend at usury or give protection to usurers—and especially when he is at fault in those things that are prohibited by the civil laws, then, if there were an emperor, he would have the primary right to correct him by admonishing him and punishing him; for to the prince belongs by primary right the correction of all malefactors. . . .

If, however, the pope were delinquent in spiritual matters, through conferring the benefices of the church simoniacally, destroying churches, depriving ecclesiastical persons and chapters of their rights, or even by teaching and pronouncing wrongly concerning those things that pertain to the faith and to good morals, then he ought first to be admonished by the cardinals, who act on behalf of the whole clergy; and if he were incorrigible and they could not of themselves remove the scandal from the church, then they would have the function of invoking the secular arm, by supplication, to give aid to the right; and then the emperor, at the request of the cardinals, ought as a member of the church to proceed against him to secure his deposition. For the church does not in any way have a secular sword, as Bernard said to Eugenius [*De Consideratione*, bk. 4, ch. 3, sec. 7]: ‘not indeed by your hand, nor by your command, but by your suggestion and supplication’; the two swords are thus mutually bound to aid each other because of the common charity which unites the members of the church. . . .

Likewise, the power assigned to Peter through the words, ‘Feed My sheep,’ is evidently only spiritual and, however it be explained, has nothing to do with princes. . . .

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But the sixth power, which is the power to take those things that are necessary to the due sustenance of life, is temporal, and ought rather to be called a right which is owed them for a stipend of life; and in this context princes are not subjects but debtors, like other Christians who receive spiritual benefits from the clergy. And the apostles, although this was owed them, did not seek this right by the way of authority, but by the way of supplication. However, the pope can pronounce this right to be due to them, and they can duly claim it as a possession. Moreover, the pope can, through ecclesiastical censure, compel the rebellious to render it.

### CHAPTER XVII

. . . In regard to the argument concerning the order of ends, I answer that this argument is defective in many ways. First, because the art to which the higher end belongs does not move and command absolutely the art to which the lower end belongs, but only in so far as is appropriate to it for the necessity of its own ultimate end. . . . It is defective also because that higher end does not necessarily always command the lower by authoritatively compelling its motions, or by instituting it, but commands it only by directing it, as a physician directs a pharmacist and judges whether he concocts the drugs properly and well, but neither institutes nor disestablishes the pharmacist himself; rather there is a superior over them both, in whom is the whole order of the state, for example, the king or lord of the state, and, if the pharmacist does not concoct his drugs in the way that suits the physician, that superior has the function of disestablishing him, as he had the function of instituting him. And so it is in the matter we are considering. All the world is like one city, in which God is the supreme power that institutes pope and emperor, whence it follows, etc. Thirdly, the argument is defective because, although it has plausibility when that which belongs to the lower art is not good or desirable in itself but only as it is ordained to the higher end which belongs to the higher art (even as the concoction of drugs, which the pharmacist performs, has to do with health, at which the physician aims), yet it is not at all valid when that which belongs to the lower art is good and desirable in itself; and to live according to virtue falls in this category. For many things are good and desirable in themselves which yet are capable of being ordained to something else. . . . Fourthly, the argument is



defective for the following reason. Let us grant that it might be valid in regard to some ordained arts, where the lower end does not lead to the higher end except in one determinate way and where, accordingly, to fail in that determinate way is to fail absolutely and to remain useless in relation to the higher end. But where the lower end is ordained to the higher in various ways, it does not necessarily follow that if it fails in one way the power constituted in it is voided as useless, since it is ordained to the end in another way, which perhaps is known only to the supreme power, for the sake of which he wills the lower power, as useful, still to continue. And thus it is with the royal power, since through this power the people are directed to God not only when the king uses his power as a king but also when he uses it as a tyrant, inasmuch as the tyranny of princes exists for the punishment of sinners. . . .

## Dante Alighieri

[The following selections are from the *De Monarchia* (text in *Tutte le opera* . . . , ed. E. Moore, Oxford, 1904, pp. 341-376), bk. 3, chs. 4, 16.]

### CHAPTER IV

. . . . They say that, according to the Scriptures of Genesis [1:16], God made two great lights, a greater light and a lesser light, the one to rule the day and the other the night. And they understand these lights allegorically to be the two governments, the spiritual and the temporal. Then they argue that as the moon, which is the lesser light, has no light but that which she receives from the sun, so the temporal government has no authority save that which it receives from the spiritual government. . . .

. . . . It should be noted that in dealing with a mystical sense it is possible to err in two ways: either by seeking it where it does not exist or by interpreting it otherwise than as it should be interpreted. . . .

. . . . I reply to those who make the above argument by destroying their assertion that the two lights typify the two governments, an assertion on which the whole force of the argument depends. That such an interpretation simply cannot be made can be shown in two ways. First, because it would seem, since these governments are accidents of man himself, that God followed a perverse order by producing the accident before its proper subject; and it is absurd to say this of God. For these

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two lights were produced on the fourth day and man on the sixth. . . .

Further, since . . . these governments are directives guiding men toward certain ends, man would not have needed such directives if he had remained in the state of innocence in which God made him. Therefore these governments are remedies against the weakness of sin. Therefore, since on the fourth day man was not only not a sinner but did not even exist, to produce the remedy would have been superfluous, which is contrary to the divine goodness. He would be a foolish doctor who before a man was born made him a plaster for a future sore. Therefore it ought not to be said that on the fourth day God made these two governments; and consequently Moses's meaning could not be what they would make it.

Also, even if one grants this falsehood, the argument can be dissolved by a distinction. For solution by distinction is kinder to an adversary, since it does not make him out altogether a liar as does solution by destruction. Thus I say that, although the moon does not have light abundantly save what she receives from the sun, it does not therefore follow that the moon herself is derived from the sun. Wherefore it should be known that the being of the moon is one thing, her virtue another, and her action is something else again. In regard to her being, the moon is in no way dependent on the sun, nor in regard to her virtue, nor in regard to her action in the absolute sense, since her motion is from her own mover, her influence from her own rays. For she has some light of her own, as appears in an eclipse, but for her better and more abundant performance she receives something from the sun, since she produces an abundant light more powerfully when she has received it.

Thus, therefore, I say that the temporal realm does not receive its being from the spiritual, nor its virtue, which is its authority, nor even its action in the absolute sense; but it does receive from the spiritual realm its capacity to act well, that it may act more powerfully through the light of the grace which, in heaven and on earth, is shed upon it by the benediction of the supreme pontiff.

### CHAPTER XVI

Although it was shown in the preceding chapter . . . that the authority of the empire is not caused by the authority of the supreme pontiff, yet it was not altogether proved that it is immediately derived from

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God, unless as a consequence of that argument. For if it is not derived from the vicar of God it follows that it is derived from God. Therefore, to prove our proposition decisively, it must be manifestly proved that the emperor or monarch of the world is immediately related to the Prince of the universe, Who is God.

Now in order to understand this it should be known that man alone among beings holds a middle place between corruptibles and incorruptibles; wherefore he is rightly likened by philosophers to the horizon which is midway between the two hemispheres. For if man is considered in terms of his two essential parts, his soul and his body, he is corruptible if the body alone is considered, but incorruptible if the soul alone is considered. . . .

If, therefore, man is something midway between the corruptible and the incorruptible, he must share both natures, since every mean smacks of the nature of the extremes. And since every nature is ordained to some ultimate end, it follows that there is a twofold end for man: that, even as among all beings he alone partakes of corruptibility and incorruptibility, so he alone among all beings is ordained to two ultimate ends, of which one is his as he is corruptible, the other as he is incorruptible.

Therefore the ineffable Providence has set before man two ends to be pursued: namely, the beatitude of this life, which consists in the operation of his own virtue and is typified by the earthly paradise; and the beatitude of the life eternal, which consists in the enjoyment of the divine countenance, to which man's own virtue cannot ascend unless it is aided by divine light; and this is described for our understanding as the heavenly paradise.

To these beatitudes, as to diverse ends, man must come through diverse means. For we come to the first through philosophic teachings, if indeed we follow them by acting in accordance with the moral and intellectual virtues. But we come to the second through spiritual teachings which transcend the human reason, if indeed we follow them by acting in accordance with the theological virtues, faith, hope, and charity. Therefore these ends and means . . . would be frustrated by human greed, if men, straying like horses in their bestiality, were not restrained on the road with bit and rein.

And therefore man needed a twofold directive, corresponding to the twofold end: namely, the supreme pontiff, who would lead the

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human race to life eternal in accordance with revealed truth, and the emperor, who would direct mankind to temporal felicity in accordance with philosophic teachings. And since none, or few, and these only with great difficulty, can reach this harbour unless the waves of alluring desire are calmed and mankind rests freely in the tranquillity of peace, this is the mark at which the guardian of this world, who is called the Roman Prince, should especially aim: that mortals in their little space may freely live with peace. And since the disposition of the world follows the inherent disposition of the heavens to move in circles, it is necessary, if useful lessons of liberty and peace, suitable to time and place, are to be applied by that guardian, that he be controlled by Him Who, foreknowing, contemplates the total disposition of the heavens. Moreover, this is none other than He Who has preordained it, so that through His control He in His providence may bind all things in their orders. But if this is so, God alone chooses, He alone confirms that guardian who has no superior. . . .

Thus, therefore, it appears that the authority of temporal monarchy flows into it directly, without any intermediary, from the fountain of universal authority. And this fountain, one in the citadel of its simplicity, flows into many channels from its abundance of goodness.

And now I seem to have reached my intended goal. For I have revealed the truth which answers the question whether the office of monarch is necessary to the well-being of the world, and the question whether the Roman people rightfully claimed empire for itself, and the last question whether the authority of the monarch is derived from God immediately or through someone else. And the truth of the last question is not to be construed so narrowly that the Roman prince is not subject to the Roman pontiff in any respect, since mortal felicity is in a way ordained to immortal felicity. Therefore let Caesar pay to Peter the reverence which a first-born owes to his father, that, brightened by the light of paternal grace, he may shine more virtuously upon the whole earth, over which he has been set by Him alone who is the Governor of all spiritual and temporal things.

### Marsiglio of Padua

[The following selection from chs. 6, 7 of *dictio* 2 of the *Defensor Pacis* (texts ed. C. W. Prévité-Orton and R. Scholz) sets forth Marsiglio's theory



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of excommunication and penance. The selection from chs. 15-17 gives Marsiglio's specific argument for locating all coercive control over the priesthood in 'the human legislator . . . or . . . its ruling part.' These passages, however, must be read in the context of Marsiglio's general system, particularly with the passages tr. above, pp. 71-78, 184-190, 233-235, 392-398.]

### CHAPTER VI

12. In order to know to whom the power of excommunication belongs, and in what way, one must observe that in excommunication the accused is by a certain judgment adjudged to punishment in the future life . . . , and also there is inflicted on him a heavy penalty applied in the present life, in that he is publicly defamed and others are forbidden to associate with him, whereby he is also deprived of civil communication and convenience. And although the infliction of the former penalty, if applied to one who had not deserved it, would do him no harm in his future life, since 'God does not always follow the judgment of the church,' that is, of the priests, namely, when they judge someone unjustly . . . , yet he who is thus unjustly stricken by the priests is most grievously injured in his present life, in that he is defamed and deprived of civil communication. Therefore it should be said that, although the voice and action of the priest is requisite in the promulgation of such a judgment, yet no priest alone, or even a college of priests, is competent to give a coercive judgment or command in regard to excommunication or absolution therefrom. Rather, to establish a judge with competence to summon and examine the accused, to judge him, and to absolve him or condemn him to be thus publicly defamed and cut off from the society of believers belongs to the whole body of believers in that community . . . , or to its superior, or to a general council. However, the examination of the imputed crime, to discover whether it is such as merits excommunication, ought to be made by such a judge together with a college of priests, or with a given number of experts from among them, according to established laws or customs.

For the priests ought to judge or define crimes in accordance with the first meaning of 'judgment': to determine in accordance with the law of the Gospel which crimes merit the cutting off of the guilty from the society of believers lest he infect others, even as a physician, or college of physicians, has the function of judging in this sense, with

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regard to bodily disease, who ought to be cut off from the society of others lest he infect them: as, for instance, a leper. Moreover, the crime ought to be of such a sort that certain testimony can prove whether it was committed. And therefore, even as no physician or even a college of physicians is competent to make a judgment or establish a judge with coercive power to expel lepers, but rather the corporation of believing citizens, or its more weighty part . . . , so also, with regard to a disease of the soul, such as a notorious crime, the right to make the judgment or to establish a judge with coercive power in this respect belongs to the community of believers and not to any single priest or any college of priests, although such judgment ought to be made in consultation with them since they are held to know the divine law, in which are determined the crimes which merit the cutting off of the criminous person from the society of non-criminous believers. . . .

Moreover, the question whether the accused actually committed the crime is not to be judged by a bishop or priest alone but by the whole body of believers in that community, or by its superior . . . , or by a judge, either a priest or a laymen, instituted by it for that purpose; and it should be proved by evidence. And if the accused is convicted by the testimony of witnesses, and if the crime is such as merits excommunication (on which question alone the judgment of the college of priests or its sounder part ought to be accepted), then the sentence of excommunication on the criminal ought to be given by the aforesaid judge appointed for that purpose by the corporation of believers of that place; and the execution of the sentence ought to be made by the command of the judge, and by the voice of the priest in so far as it affects the guilty person in regard to the future life.

13. . . . Moreover, the opinion just presented can be confirmed by reason as well as by Scripture. For judgment made in the way described is more certain and more free from suspicion than judgment made solely by the will of a single priest or college of priests alone, since their judgment is more readily perverted by love or hate or by regard for their own advantage than is that of the corporation of believers, an appeal to which is always possible; however, as we have said, the execution of such a sentence ought to be carried out by the priest in so far as it involves his divine power to inflict on the criminal in this life a kind of punishment which cannot be inflicted by human power, as, the vexation of a demon; and because the criminal is like-

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wise adjudged to punishment in the future life; and because he is deprived of the intercession of the church, which, perhaps, God has instituted to be made through priests alone.

Further, if any bishop or priest alone, or with only his college of clergy, was competent to excommunicate someone without the consent of the body of believers, it would follow that priests or colleges of priests could take away all kingdoms and principates from the kings and princes that hold them. For when any prince is excommunicated, the multitude subject to him will also be excommunicated if it tries to obey the excommunicated prince; and thus the authority of any prince will be destroyed. . . .

### CHAPTER VII

1. . . . Let us say, in summarizing the power or authority of the sacerdotal keys granted by Christ to the apostles, that there are some things that, in a sinner truly penitent, God does alone without any prevenient ministry of the priest: namely, the illumination of the mind, the purgation of the guilt or stain of sin, and the remission of eternal damnation. But, in the same sinner, there are other things that God does not by Himself alone but through the ministry of the priest: as, to show forth to the church who is considered to be loosed from or bound by sins in this life and ought to be bound or loosed in the other: that is, whose sins God has kept or pardoned. Further, there is something else which God does in regard to the sinner through the ministry of the priest: namely, the commutation of the punishment of purgatory due to the sinner in the future life into some temporal satisfaction in this life. . . . Thus, also, through the priest the contumacious are excluded from the communion of the sacraments, and the repentant are admitted. . . .

3. In further explanation, let us use a quite familiar example or analogy. . . . Let us say that the priest, as the turnkey of the celestial Judge, looses the sinner in the same way as the turnkey of an earthly judge. For even as an accused person is condemned or absolved in regard to civil guilt and punishment by the word or sentence of a secular judge, namely, of the ruler, so, strictly speaking, one is bound or loosed in regard to the guilt or the debt of damnation or punishment in the future life by the divine word. And, even as no one is acquitted or condemned in regard to civil guilt or punishment by the action of the

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turnkey of the earthly prince, yet through his action of opening or closing the prison the accused is shown forth as acquitted or condemned, so, as it were, no one is loosed or bound in regard to the guilt and debt of eternal damnation by the action of the priest, yet, through giving benediction and admitting to the communion of the sacraments, he shows forth to the church who is held loosed or bound by God. . . .

### CHAPTER XV

1. . . . Now there is a difficult question to be considered. For we said . . . that the human legislator itself, either directly or through its ruling part, is the active cause of the institution of all the offices or parts of the state. But we also recall that we said . . . that the priesthood or sacerdotal office of the New Law was first instituted by Christ alone; and, as we have shown . . . , He renounced all secular rule and temporal lordship and was not the human legislator. . . . Consequently, someone may well wonder to whom, especially in what are now perfect communities of believers, the authority to institute the priesthood really belongs; for the things we have said on this point seem to be inconsistent with each other.

2. Let us, therefore, try to solve the apparent contradiction. . . . In so far as it involves the personal qualification which the teachers of the Holy Scripture call the priestly 'character,' the efficient cause of the priesthood, immediately and as its maker, is God, Who imprints this character on the soul through the ministry of a previous and, as it were, preparatory human act. In the New Law, this began with Christ. For He, Who was true God and true Man, as a human priest performed the ministry which subsequent priests now perform and as God imprinted the character on the souls of those whom He instituted priests. And in this way He first instituted the apostles as His immediate successors and thus also, consequently, all other priests, through the ministry of the apostles and their successors in this office. For when the apostles or other priests lay their hands on other men and offer the proper words and prayers, Christ as God imprints the sacerdotal quality or character on those who worthily desire to receive it.

This applies likewise to the conferring of other orders in which a certain character is imprinted on the soul of the recipient. This sacerdotal character . . . is the power through which the priest is able to consecrate from bread and wine the blessed body and blood of Christ,



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by pronouncing certain words, and to administer the other sacraments of the church, and also that through which he can bind and loose men from their sins. . . .

4. Now it seems probable to me that this sacerdotal character . . . (which we shall hereafter call the authority *essential to* or *inseparable from* a priest as such) is the same in species in all priests, and that neither the bishop of Rome nor any other has it more fully than a simple priest. . . .

5. And, to show this more evidently, we should not conceal the fact that the words priest (*presbyter*) and bishop (*episcopus*) were synonymous in the early church, although they connoted different characteristics. For the word *presbyter* referred to age, meaning 'elder'; *episcopus*, meaning 'overseer,' to dignity or charge over others. . . .

6. But after the time of the apostles, when the number of priests had grown considerably, in order to avoid scandal and schism the priests chose one of themselves to direct and ordain the others in regard to the performance of the ecclesiastical office and service, and the distribution of the offerings made to the church, and the disposition of other matters in the more suitable way, lest the affairs and service of the temples be confused by a diversity of wishes, as they would be if everyone were acting at his own pleasure and whenever it suited him. And he who, according to this later custom, was chosen to rule the other priests kept for himself alone the name of bishop, or overseer, since he was overseer not only of the faithful people (for which reason all priests in the primitive church were called bishops) but also of the rest of his fellow priests. . . .

7. But this human election or institution conferred on the priest so chosen no more of essential merit, or sacerdotal authority, or the power first described above, but only a certain power of managerial rule in the house or temple of God, of ordaining others to be priests, deacons, and the rest of the officers, and of regulating the terms on which power was given to the monks of those times. It involved, I assert, no coercive authority whatever, except in so far as such power might have been granted by the human legislator, . . . nor any other intrinsic dignity or power. . . . It follows that the bishop of Rome has no more of essential sacerdotal authority than any other priest, even as the blessed Peter had no more than the other apostles. For all received this authority from Christ equally and immediately. . . .

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9. Now certain matters and institutions of sacerdotal offices are not essential. This is true of the choice already discussed by which one of the priests is designated to the ordaining and governing of the others in regard to things pertaining to divine worship; and this is also true of the choice and institution of certain others to teach and instruct and administer the sacraments of the New Law to a particular people and in a specified place, greater or smaller, likewise also to administer, for themselves or for the poor, certain temporals appointed and ordained by the legislator or by individual persons for the sustenance of those poor clergy who teach the gospel in a certain province or community and also for the sustenance of other poor people . . . from whatever surplus remains after providing for those who teach the gospel. Which temporals, thus established, are in modern usage called ecclesiastical benefices. . . . For these temporals are entrusted to the ministers of the temples for the aforesaid uses: to the ministers, I say, who have been appointed, chosen, and ordained to certain provinces; for through their sacerdotal authority, in which they are successors of the apostles, they are assigned to teach and administer the sacraments of the New Law no more to any one place or people than to any other, even as the apostles were not so assigned. For it says in the last chapter of Matthew [28:19], 'Go ye into all the world and teach all peoples.' Thus Christ did not assign them to specific places, but they themselves afterwards divided among themselves the peoples and provinces in which they would preach the word of God and the law of the gospel, which they had received by divine revelation. Whence also it was said in Galatians [11:9], 'They gave to me and to Barnabas the right hand of fellowship . . . that I should go to the gentiles, he to the circumcized.'

10. Thus, therefore, it is apparent from what we have said who is the efficient cause of the institution of the priesthood in so far as it involves a quality or character of the soul, and of the other holy orders, since they are derived immediately from God, or Christ, although by way of a certain previous and, as it were, preparatory human ministry: namely, the laying on of hands and the pronouncement of certain words, which perhaps have no effect in this matter but precede it by a certain agreement or ordinance of God. It also appears from the aforesaid that there is a certain human institution by which one of the priests is set over the others, and by which priests are appointed to teach and instruct specific provinces and peoples in the divine law, and to administer the

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sacraments there, and to dispense the temporals which we have called ecclesiastical benefices. . . .

### CHAPTER XVI

[In this chapter Marsiglio continues to examine the papal primacy, attempting to prove that Peter had by divine grant no essential powers not shared by the other apostles and that the pope is not especially the successor of Peter. His analysis of actual practice in the church of the New Testament and his critical study of the legendary history of Peter are remarkable instances of a quite unmedieval degree of historical acumen. But we have space only for his conclusion.]

19. . . . Although . . . each successor of the blessed Peter may in a certain way appear more reverend than the successors of the other apostles, yet no necessity of Holy Scripture requires that the successors of the other apostles be regarded as subject to the successors of Peter in regard to any of the powers we have mentioned. Even if we grant that the apostles were unequal in authority, it does not follow that the blessed Peter or any other apostle had, by virtue of the words of the Scripture, the power of institution or deposition over others, either in regard to essential sacerdotal dignity, or in regard to the interpretation of the Scripture or of the catholic faith, or in regard to any coercive jurisdiction in this life; but rather the contrary. Whence we must necessarily conclude that neither does any successor of any one of the apostles have any of these powers over the successors of the others.

### CHAPTER XVII

2. . . . It seems clear that through the power or character by which a priest is instituted he has the power to minister anywhere at all and over any people, although, by divine revelation or human ordinance, certain priests are assigned to a certain place or people rather than to another, especially in these times. . . .

8. . . . I wish to show that after the time of the apostles and the early fathers who immediately succeeded them in office, and especially in what are now perfect communities of Christians, the immediate cause of the institution or assignment of a pastor (either a greater pastor, who is called a bishop, or a lesser, who is called a parish priest), and likewise of other minor clergy, is and ought to be the whole multitude of Christians of that place, through its choice or expressed will, or the

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person or persons to whom the said multitude has granted authority to make such institutions; and that it belongs to the authority of the same to remove any of the aforementioned officers or deprive him of his office, and also, if it seems expedient, to compel him to perform his office.

It must, however, be observed that, although any priest can extend his ministry by promoting any other willing Christian to the priesthood, he himself serving as an instrument while the essential priestly power or character is absolutely and immediately imprinted by God, yet I say that neither by divine law nor by human law ought he, in what are now perfect communities of Christians, to confer this power on anyone at his pleasure, lest in conferring this power on one who is criminous or otherwise unqualified he sin lamentably against divine and human law. . . .

9. From these considerations, I wish further to draw the necessary inference that in already perfect communities of Christians it belongs only to the human legislator, or the multitude of Christians of the place over which the minister is to be established, to elect, determine, and present persons to be promoted to ecclesiastical orders; and that no priest or bishop singly, nor any single college thereof, is permitted to confer such orders without the permission of the human legislator or of the ruler who bears its authority. Moreover, I shall first demonstrate this by Holy Scripture and then confirm it by probable reason.

10. By the authority of Scripture this is evident from Acts 6: [1-6]. For the holy apostles, needing deacons to minister for themselves and for the people, summoned the multitude of Christians as that body whose it was to choose and determine such persons. Thus we read in this passage: 'Moreover the twelve, calling together the multitude of disciples (that is, of Christians . . .) said, "It is not right that we should leave the word of God in order to minister at tables. Choose therefore, brethren, seven men of good repute from among yourselves, full of the Holy Spirit and of wisdom, whom we may put in charge of this work. We, however, shall be constant in prayer and in the ministry of the word." And this speech pleased the whole multitude. And they chose Stephen, a man full of the Holy Spirit and of faith, and Philip,' and the rest likewise. But if, in the presence of the apostles, such an election was entrusted to a less perfect multitude, that the best qualified



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should be more certainly chosen (since a whole multitude may know something, especially of the morals and life of a man, of which a very learned man is often ignorant), how much more ought the election of priests, who have more need of virtue and wisdom than deacons, in the absence of such prelates as the apostles, and in a perfect community of Christians, to be entrusted to the whole body, that fuller and more certain knowledge of the candidate may be secured. . . .

11. Now, moreover, I wish to show by probable reason—if the necessary can be called probable—that the election and approval of a candidate for holy orders, in already perfect communities of Christians, belongs to . . . the decision of the human legislator; as does his secondary institution, by which he is made bishop or parish priest over some Christian people in a specific place . . . ; also his removal from or deprivation of his office; and, if necessary, compelling him to perform his office. Then I shall show to whom belongs the allotment of ecclesiastical temporals, called benefices.

And the first can be proved by arguments like those with which we proved, in chs. 12, 13, and 14 of *dictio* 1, that legislation and the institution of rulers belong to the body of citizens, changing only the minor premise of the proof: that is, substituting for the term 'law' or 'ruler' the election or approval of a candidate for holy orders, and his institution or appointment to the charge of a certain people or province, and his deprivation of or removal from the same on account of delinquency or some other rational cause.

Moreover, in these arguments the necessity of doing these things through the legislator or body of citizens is more evident in proportion as error in regard to a candidate for the priesthood or some other ecclesiastical rank and for the pastoral office is more perilous than an error in regard to human law or a ruler instituted in accordance therewith. For if a man who is morally perverse or ignorant or otherwise deficient is promoted to the priesthood and is thus given the care and direction of a Christian people, the peril of eternal death and of many civil disadvantages thereby threatens the people. . . . And the Christian people has, and reasonably ought to have, the power of discretion or caution, for otherwise it could not avoid this evil. . . .

12. . . . Thus also, because of the peril [of eternal death] the ecclesiastical minister ought to be forced, and reasonably can be forced, through the human legislator or the prince, to administer the

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sacraments which are necessary for salvation, for instance, baptism, if he should perversely refuse to do this. . . .

14. Nor is there any obstacle in the argument that priests or a college of priests will know better how to judge concerning the qualifications of candidates for the priesthood or for the pastoral office or for other minor offices. . . . Because, even if we grant that priests have fuller and more certain judgment of such matters than have the rest of the multitude of citizens—which, however, is often not the case nowadays—yet it cannot be inferred from this premise that a college of priests alone has more certain judgment of these matters than has the whole multitude of which the priests are a part. Therefore when the rest of the multitude is joined to the college of priests, a more certain and secure judgment can be obtained than from the college of priests alone. For ‘the whole is greater than any of its parts.’

Yet, of course, it ought to be maintained, and a law properly framed in accordance with divine law ought to decree, that in this matter the ruler should have confidence in the judgment of priests or doctors of divine law and other worthy men, even as he ought to use the judgment of experts and the findings of examiners on training and morals in regard to candidates for promotion in other disciplines. . . .

15. Therefore, candidates for ecclesiastical orders ought to be approved or rejected by the opinion or judgment . . . of the legislator or the ruler who bears its authority; likewise instituted in or removed from a greater or lesser pastorate, or prohibited from exercising it, or even, if they wickedly cease to perform the duties of their offices, compelled to perform them lest by their perversity the peril of eternal death should threaten the people. . . . And this, of course, is to be understood as applying to already perfect communities of Christians. For in any place where the legislator and the ruler who bore its authority were infidels, as was the case in most and nearly all communities in the time of the primitive church, the authority to approve or reject candidates for ecclesiastical orders, with the rest of the institutions aforesaid and the exercise of offices, would belong to the priest or bishop together with the wiser part of the Christian group there, or to the priest or bishop alone if he was alone, without the consent or knowledge of the ruler. . . . This is what the apostles did at the beginning of the church of Christ, and in default of a legislator they were obliged, and by divine law would be obliged, to choose their own successors. . . .

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16. Now, concerning the distribution of temporals, which are usually called ecclesiastical benefices, it must first be recognized that such temporals were ordained for the sustenance of ministers of the gospel and of other poor persons either by the legislator . . . or by some individual person or college. If such temporals were thus appropriated by the gift and ordinance of the legislator I say that legally, according to divine law, it can entrust to whom it wishes, when it wishes, the authority to allot them; and when it wishes it can, for cause, revoke this authority from the person or persons to whom it had entrusted it, whether a single individual or a college. . . . It can also sell or otherwise alienate them, if a rational cause has supervened, because they belong to the legislator and are by right always in its power, except in the case in which it had transferred the thing itself, either absolutely or by infeudation, to the power of another college or individual; with the qualification, however, that in any event the Christian people is bound by divine law to sustain the ministers of the gospel, if it can, with food and proper clothing: with which they ought to be content. . . . If, however, such temporals were designated for pious uses by the gift or bequest of an individual or individuals, I say that they ought to be kept, guarded, and allotted in accordance with the intention of the donor or testator. But if there appears any fault needing correction in those who allot such temporals, such an error ought to be corrected by the human legislator or the prince who bears its authority, in accordance with the intention of the donor or testator. . . .

17. Further, I wish to show that assertions made by the authority of the catholic kings of France concerning the institution of ecclesiastical ministers and the assignment or grant of temporals or benefices ought not to be despised but rather heeded. For they assert that by right, as up to the present time they have willed and caused to be observed in fact, the authority to institute and to allot some ecclesiastical offices and temporals or benefices belongs to them, and that they did not derive this authority from any individual or college of mortals of any sort. For the legislator or prince is not prohibited by divine law from instituting, granting, or assigning such things; on the contrary, in perfect communities of believers this authority, if it is legitimate and not surreptitiously usurped by individual priests or colleges of priests, is derived from the legislator. . . .

18. On the basis of the foregoing principles we must also add that,

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so long as there remains an adequate residue for the ministers of the gospel, the human legislator or the prince who bears its authority can in accordance with divine and human law legally take talliages and taxes from ecclesiastical temporals, especially from the proceeds of the immovables which we have called benefices, for the defence of the country, the ransom of those taken prisoner in the service of the faith, the support of public expenses, or any other reasonable cause according to the determination of the Christian legislator. For he who by legacy or gift established such temporals for pious causes and entrusted them to some person or persons for allotment could not grant them to any college or individual with greater immunity than he had when they were in his power. But they were never before immune from public burdens; therefore they are not immune after being transferred by a donor or testator to the power of anyone else.

### William of Occam

[Occam's ideas on the relation of spiritual and secular power can be gleaned from his many polemical works but are most succinctly and positively set forth in his short *De Imperatorum et Pontificum Potestate*, from which the following passages are taken. I have used the text edited by C. K. Brampton (Oxford, 1927). This little treatise was written toward the end of Occam's life, in 1346 or 1347, probably in response to a new papal citation issued against him in 1347. At all events, he was still under the ban of the church; the emperor no longer needed him; his minorite friends were all dead or had submitted to the pope. Considering all the circumstances of Occam's life and work and the ideological climate of the times, the statement quoted from the preface deserves to be remembered as one of the noblest assertions of intellectual integrity ever made.]

#### PREFACE

. . . . I beg and entreat that whoever reads the things to be written here, if he thinks that I have erred in any way, may deign to show me my error in writing, through rational argument or an authority that I am bound to accept; and if I do not wish to make a reasoned answer, I shall acknowledge that I have erred. For I should blush to yield to the weight of numbers but not to yield to truth; rather I should think such a defeat most serviceable to me. Yet let all men hold this as certain: that in matters of faith and of knowledge, one evident reason or



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one authority of Scripture reasonably understood will move me more than the assertion of the whole world of mortal men. . . .

### CHAPTER I

. . . . When Christ constituted the blessed Peter head and prince of all believers, he did not give him such plenitude of power that he could regularly and by right do everything which was not contrary to divine or natural law, but assigned definite limits to his power, which he was not to transgress. That he did not give him such plenitude of power in temporals is proved by authority and by reason. For the apostle says in II Timothy 2: [4] , 'Let no one fighting for God involve himself in secular affairs, that he may please Him Whose favour he has won.' Therefore, since the blessed Peter was not the least among the special soldiers of God, and particularly strove to please God, he ought not to involve himself in secular affairs, and thus his receiving from Christ such plenitude of power in temporals would have been to no purpose. Also, plenitude of power in temporals includes the power and domination of the kings of the gentiles; but Christ prohibited the power and domination of the kings of the gentiles to the blessed Peter and the other apostles, as appears in Luke 22: [25-26], Mark 10: [42-43], and Matthew 20: [25], where we read that Christ said these words, 'You know that the princes of the gentiles lord it over them, and those who are greater among them exercise authority; not so will it be among you, but whoever may wish to become greater among you will be your minister.' Therefore, on the contrary, Christ forbade to the apostles the aforesaid plenitude of power in temporals.

Further, no temporal lord has greater rightful power over his slave (taking the word 'slave' in its most precise sense) than that he can impose on him everything which is not contrary to divine law or the law of nature; wherefore, if Christ had given to the blessed Peter such plenitude of temporal power over all believers, He would have made all men his slaves in all respects, which is manifestly inconsistent with the liberty of the law of the gospel. . . . Moreover, even as Christ did not give the blessed Peter such plenitude of power in temporals, so also he did not grant him such plenitude of power in spirituals. For . . . the evangelic law is a law of less servitude than was the Mosaic law, which the blessed Peter said, as we read in Acts 15: [10], was 'a yoke which neither he nor his fathers could bear.' If, however, the blessed Peter

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had received from Christ the aforesaid plentitude of power in spirituals, he would have received from Christ the authority to impose on the faithful more and heavier burdens, in regard to divine worship and in regard to vigils, fasts, and other spiritual matters, than were the burdens of the old law. Thus the law of the gospel would be a law of greater servitude than the law of Moses. Therefore . . . it can be seen that Christ, when He set the blessed Peter over all believers, set definite limits which he was not permitted to transgress.

### CHAPTER II

. . . . We should now see what these limits are that the blessed Peter was not permitted to transgress and within which he was permitted to exercise the power entrusted him by Christ. . . .

In the first place, I think it should be maintained that the papal principate instituted by Christ in no way regularly includes temporals and secular affairs; and this is manifestly proved not only by the words of the apostle in II Timothy 2: [4], cited above, but also the blessed Peter, as we read in [*Decretum*], c. 29, C. 11, q. 1, told the blessed Pope Clement, 'You must indeed live blamelessly and strive with the utmost zeal to put aside all the affairs of this life: not to become a guarantor, nor an advocate in lawsuits, nor to be found involved in any sort of mundane business at all. For Christ wishes to ordain you today neither judge nor advocate in secular affairs.' And the blessed Bernard, writing to Pope Eugenius concerning the papal power, alludes to this, saying, 'You have power in regard to sins, not in regard to possessions. Because of the former, not the latter, you have received the keys of the kingdom of heaven: that you may exclude false witnesses, not possessors' [*De Consideratione*, bk. 1, ch. 6].

If, therefore, the pope, except in case of necessity, intervenes in temporals, he is considered to put his sickle into another's harvest, unless he has received authority over such matters from the emperor or someone else. And indeed what he does in such matters is not valid, since 'those things that are done by a judge are null and void if they do not belong to his office' (ch. 26, bk. 5, tit. 12 in *Sexto*). . . .

### CHAPTER IV

From the aforesaid we conclude that the papal principate does not regularly include the power to abolish or disturb the rights and liberties

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of others, especially those of emperors, kings, princes, and other laymen, since rights and liberties of this sort are in most cases reckoned among secular matters, to which the papal principate, as we have shown, by no means regularly extends.

Hence the blessed Ambrose says in his commentary on the Epistle to Titus, 'The Christian religion deprives no one of his right'; wherefore the pope cannot deprive anyone of his right, especially of a right derived not from himself, but from God, from nature, or from some other man; and by the same reasoning he cannot deprive anyone of the liberties granted him by God and nature. . . .

### CHAPTER VII

. . . . That the papal principate was established by Christ for the good of the subjects and not for the honour and advantage of the pope and, further, that that principate ought not to be called dominative or despotic but ministerial, so that the powers that it has by Christ's ordination extend only to those things that are necessary to the salvation of the believers, excluding the rights and liberties of others, is evident from the words of Christ which, as we read in Luke 22: [25-27], He spoke to Peter and the other apostles, and thus to the successors of the blessed Peter: 'The kings of the gentiles have dominion over them, and they that exercise authority among them are called benefactors. But ye shall not be so; but let him who is greater among you be as the lesser, and let him who is chief be as a servant. For who is greater, he who sits at meat or he who serves? Is it not he who sits? I, however, in the midst of you am as he who serves.' Matthew reports the same saying in his twentieth chapter: [25-28], and Mark in his tenth chapter: [42-45]. Christ did not by these words forbid all principate or prelacy to the apostles, as some, who understand wrongly, affirm. . . . But he forbade to them a principate of domination, which in a word taken from the Greek is called despotic, which, according to [I] *Politics*, [ch. 1], is the kind of principate one has over slaves; such a principate Christ did not give to the apostles, but a ministerial principate, which is the kind of principate one has over free men, and which is much nobler and greater in dignity than a dominative principate even though it is not so great in extent of power, . . . even as a principate over men is nobler than a principate over beasts. . . .

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### CHAPTER VIII

We must now consider what is included in the papal principate; and it seems to me that on this point we must say that everything possible to a mortal prince and ruler which is necessary to securing the eternal salvation of souls and to the organization and government of believers belongs to the papal principate, but in such a way that a due measure be not grossly exceeded, and excluding the property, rights, and liberties of others, except that the pope can exact from his subjects enough for his own needs. For if all the aforesaid powers did not belong to the apostolic principate, Christ's provision for his church would not be sufficient, but would be lacking in things necessary to it, since it is necessary to the church that everything that it needs for these purposes be procurable by its superiors. For otherwise its ruler would not have sufficient authority to control the things subjected to him, and in such a case the saying of Solomon [Proverbs 11:14] would apply: 'Where there is no ruler, the people perish'; and the saying of Christ in John 10:[16] would not then be fulfilled: 'Let there be one flock and one shepherd.'

### CHAPTER IX

But, one asks, what are the rights and liberties of others which are regularly exempted from the power of the apostolic principate?

The answer is that these rights and liberties include all the rights and liberties of unbelievers, which they licitly and justly enjoyed before and after the incarnation of Christ: rights and liberties which ought not to be taken from believers against their will, since believers ought not to be worse off through being subjected to the perfect law of liberty, namely, that of the gospel, than unbelievers were either before or after the incarnation of Christ. . . .

From this we conclude that the rights and liberties of laymen, especially, cover all such things as are required for the disposition of temporals and secular affairs, since all such things were at the disposal of unbelievers and belong to this category. And to this assertion the blessed Peter also bears witness, since, as we read in [*Decretum*], c. 30, C. 11, q. 1, he says: 'For even as it is a crime of impiety for you, Clement, to engage in secular affairs while neglecting the furtherance of the word of God, so it is a sin for any layman if he does not in his turn work faithfully in those affairs that belong to the use of common



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life. But let all labour together, that you may be secure from those matters that you ought not to approach.'

Thus the same apostle says, as read in the preceding canon [29], 'But let the laymen, who do not have your responsibilities, cooperate in those activities, namely, those that concern secular business, which we have said to be less fitting for you, and let no one keep you from the pursuits through which salvation is given to all.'

From these words follows the conclusion that the disposition of temporals belongs to laymen, at least when they are found to be qualified and believers. Moreover, to explain in general terms what things belong to the rights and liberties of laymen and of regular and secular clergy, I think that they are all such things as are found to be adverse neither to good morals nor to the teachings of the New Testament, so that no Christian can be barred by the pope from rights of this sort except for guilt or for a reasonable and manifest cause, unless he has voluntarily bound himself through an oath or vow or other means, or has been bound by some superior of his to whom he owes obedience, to abstain from rights of this sort. And this is the liberty of the law of the gospel, which is set forth in Holy Scripture.

### CHAPTER X

But someone asks further what, specifically, are those things to which the apostolic principate extends.

To this I answer that it belongs to the pope, even as to all bishops in general, as the canons bear witness, to further the reading, speaking, preaching of the word of God and divine worship and all those things that are necessary and proper to Christians for the attainment of eternal life and do not exist among unbelievers. Moreover, the pope especially and principally, since he cannot himself do all such things in every part of the earth, ought to provide usefully and prudently, in no way exceeding a due measure, for their being well managed by inferiors; and this is the care of all churches which the pope ought to have; and these things, which are reckoned among spirituals, regularly belong to him.

Moreover, in case of necessity, or of utility amounting to necessity, he can and should intervene in temporals when all others fail to whom these responsibilities belong, filling the gap left by the reprehensible and dangerous negligence of others; and this is the plenitude of power in which the pope is preeminent and radiant, by which regularly or

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casually he can do all things that are deemed necessary to the government of the faithful. But he cannot command those things that are not necessary, so long as they are not necessary, however spiritual they may be, lest he make the evangelic law a law of slavery; however, he can advise some of them.

### CHAPTER XI

[This chapter answers some of the specific arguments by which the papal plenitude of power was customarily defended. The promise of Christ to Peter, 'Whatsoever thou shalt bind,' etc., is to be understood as implying its exceptions. The same qualification applies to canons that seem to indicate an unlimited power. Canons referring to papal laws as absolutely binding are to be understood as referring only to such papal laws as do not need acceptance in 'the custom of the users' to become effective. Finally, many authorities quoted in support of the power of the pope ought to be understood as referring to powers that he has received from human law, which extend only so far as the faithful have granted.]

. . . . And if there be any doubt how great such a grant is, so that interpretation is necessary, such interpretation does not belong to the pope, but belongs either to him who gave such power to the pope, or to his successor; or else the interpretation should be made in accordance with the prudence and counsel of a wise man, zealous for justice, whether he be a subject or a ruler. If such men are not to be found, the more benign, more human, more rational, and more probable interpretation ought to be accepted.

### CHAPTER XII

Although through these general principles the studious would be able to answer innumerable objections, yet there is one objection that I have decided to answer specifically. The objection follows. The community of the faithful ought to be subject to one head and supreme judge in regard to all causes and cases that may arise, because otherwise it would be by no means well ordained, since it would either have several heads or would lack a head altogether, and both these conditions are monstrosities. But only the pope is head of all the faithful in regard to all things, since the emperor is excluded because spirituals in no way belong to him; therefore the community of the faithful is subject to the pope in all respects.

To this I answer that, even as the archbishop in his archbishopric

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and the patriarch in his patriarchate are chief heads and supreme judges in spirituals, although they cannot take cognizance of the cases of their subjects unless these cases are brought to them through appeal or some method permitted by law ([*Decretum*], c. 8, C. 9, q. 3) and, further, even as they are not regular and ordinary judges in all cases of all who live in their archbishopric and patriarchate, in the same way all believers are not regularly subject in all things to the pope, nor, in many cases, is the pope their judge; yet, because he can regularly or casually, by divine law, be judge in case of necessity in any case that is to be settled by judgment, it should be granted that in this sense the pope is, under Christ, the head and highest judge of all believers. Moreover, this is not true of the emperor, since the emperor as such ought not to interfere even casually in spirituals, since many true emperors have been infidels; however, if he is a Christian, he may be bound as a Christian to intervene in many cases concerning many spiritual causes, and especially in regard to the cause of the faith, 'which is the concern of each and every Christian' ([*Decretum*], c. 2. and 4, di. 96).

### CHAPTER XIII

From the aforesaid we may summarize what is involved in the sublimity of the apostolic principate, because this consists of three things. First, that it is a principate in respect of spirituals, which are of greater dignity than seculars ([*Decretum*], c. 10, di. 96). Second, that it is a principate over free men, not over slaves, because no one is by divine law a slave of the pope. . . . Third, that the pope can by divine law regularly or casually do all things that are necessary to the organization and government of the faithful, although his ordinary and regular power is limited by definite boundaries, which he is not regularly permitted to transgress. And what those boundaries are is clear from the foregoing argument, though it is not clear in which cases those things that are not regularly granted to him may be permitted him. Perhaps it is impossible to give a fixed general rule for these special cases; but in such cases the greatest caution must be used, according to the discretion and counsel of the wisest men, most sincerely zealous for justice, without any exception of persons, whether subjects or rulers, whether poor or rich, if they can be found. If, however, such men are not available, no action should be taken, lest the pope, because of the ignorance under which in fact he often labours, should dangerously

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transgress the ancient boundaries and make decisions which may be null and void by divine law itself. . . .

### CHAPTER XV

. . . . We shall show how the church of Avignon, doing heavy and enormous injuries to all the faithful of Christ, is attempting to rule all Christians tyrannically, and how in order to do this more freely and without fear, but not without the mark of tyranny, it prosecutes those who are so bold as to dispute about its power and about its good intention, so that in universities and other schools no doctor or lector dares to propose or accept for discussion and determination in any way any question that concerns the power of the pope, although to dispute about the power of the pope (not with the intention of abolishing or diminishing it or throwing into doubt what ought to be believed concerning it, but with the intention of refuting those who err in regard to it, either diminishing it or extending it further than is right, and of bringing to public notice those aspects of papal power that are not self-evident) ought to be welcome and acceptable both to the pope and to all his subjects, since it is necessary for both to know what power the pope has, and how much, and by what right. For this knowledge is necessary to the subjects, that they may be subject only so far as is expedient, and no further. . . . This knowledge is necessary to the pope also, lest he transgress the ancient boundaries set by his fathers. And therefore, if the pope strikes fear into those who dispute about his power, he deservedly opens himself to the suspicion that he does not intend to be restricted by the legitimate boundaries of his proper power but intends to rule his subjects tyrannically. . . .

### CHAPTER XVI

Moreover, it is not only right for learned men to inquire discreetly and with good intention what power the pope has, but it is also expedient and necessary for them to judge his deeds, if they cannot possibly proceed from a good intention: that is, to decide that they are bad and reprehensible and at the proper place and time to assert this and intimate it to others; because everyone is permitted to judge concerning manifest things (c. 2, X, bk. 5, tit. 41). Therefore, although when papal deeds could have been the result of good intentions they should have the benefit of the doubt, yet when they are such as could not have



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been done with good intentions (for instance, fornication, oppression of good men, invasion or detention of the property or rights of others, condemnation of truth, teaching of heresy, defamation of the innocent, disturbance of the peace, promoting the attack of enemies, partiality, pronouncement of unworthy things, opposition to worthy things, simony, pride, avarice, sowing of discords, encouragement of division, falsehood, tyranny, homicide, and the like), anyone is permitted to judge them; for such deeds of a pope are bound to be regarded as blameworthy. . . .

### NOTES TO CHAPTER SIX *pages 357 to 380*

1. I Corinthians 2:15.
2. See references in Gierke, *Political Theories of the Middle Age*, n. 131.
3. The unity of the church requires a single head: *Summa contra Gentes*, bk. 4, ch. 76; other ecclesiastical powers are derived from the papal power: *Commentary on Sentences*, bk. 2, di. 44, q. 2; bk. 4, di. 24, q. 2, art. 3; the pope alone has authority to determine matters of faith: *Summa Theologiae*, 2a 2ae, q. 1, art. 10; subjection to the pope is necessary for salvation: *Opusculum contra Errores Graecorum*, ch. 32.
4. *Dictatus Papae*, 7; Aegidius Romanus, *De Potestate Ecclesiastica*, bk. 1, ch. 1, and bk. 3, ch. 7; James of Viterbo, *De Regimine Christiano*, bk. 2, ch. 5; Augustinus Triumphus, *Summa de Potestate Ecclesiastica*, q. 22, art. 1, and q. 23, art. 4; Alvarus Pelagius, *De Planctu Ecclesiae*, bk. 1, chs. 45, 46, and 58.
5. Aquinas, *Quodlibeta*, 4, art. 13; *Summa Theologiae*, 1a 2ae, q. 97, art. 4; Hostiensis, *Summa super Titulis Decretalium*, bk. 5; Augustinus Triumphus, *op. cit.*, qs. 48-60, 223, art. 4; Alvarus Pelagius, *op. cit.*, bk. 1, ch. 46; John of Turrecremata, *Summa contra Ecclesie et Primatus Apostoli Petri Adversarios*, bk. 3, chs. 51-57; cf. Walter Ullmann, *Medieval Papalism* . . . (London, 1949), ch. III.
6. Aegidius Romanus, *op. cit.*, bk. 3, ch. 2; James of Viterbo, *op. cit.*, bk. 2, ch. 5; Augustinus Triumphus, *op. cit.*, q. 3, arts. 7-9, and q. 6, art. 6; *Tractatus Brevis de Duplici Potestate Prelatorum et Laicorum*, pp. 493 ff., tr. below, pp. 385 ff.; Alvarus Pelagius, *op. cit.*, bk. 1, chs. 6, 17, 18; Turrecremata, *op. cit.*, bk. 2, ch. 54; bk. 3, chs. 28, 32.
7. Aegidius Romanus, *op. cit.*, bk. 3, ch. 12.
8. *Ibid.*, bk. 3, ch. 9, tr. below, pp. 382 ff.; Augustinus Triumphus, *Summa de Potestate Ecclesiastica*, q. 19, art. 5; Turrecremata, *op. cit.*, bk. 2, chs. 53, 65.
9. Aegidius Romanus, *op. cit.*, bk. 1, ch. 2; James of Viterbo, *op. cit.*, bk. 2, ch. 5; Augustinus Triumphus, *Summa de Potestate Ecclesiastica*, q. 6; Alvarus Pelagius, *op. cit.*, bk. 1, chs. 4-8, 34, 45; Turrecremata, *op. cit.*, bk. 2, ch. 93.
10. See above, ch. V, *passim*.
11. Matthew 16:19; 18:18.

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12. Bernard of Clairvaux had particularly emphasized the principle that the functions of ecclesiastical officers were prescribed by divine law and that the pope could not 'place the members in the body of Christ otherwise than as He had arranged them'; *De Consideratione*, bk. 3, ch. 4, sec. 7.

13. Augustinus Triumphus, *Summa de Potestate Ecclesiastica*, q. 5, arts. 1, 6; q. 6, art. 6; Alvarus Pelagius, *op. cit.*, bk. 1, chs. 4-6, 34; bk. 2, ch. 10.

14. Augustinus Triumphus, *Summa de Potestate Ecclesiastica*, q. 6, art. 6; Alvarus Pelagius, *op. cit.*, bk. 1, ch. 6; Turrecremata, *op. cit.*, bk. 3, chs. 28, 32.

15. Augustinus Triumphus, *Summa de Potestate Ecclesiastica*, q. 3, arts. 7-9; Turrecremata, *op. cit.*, bk. 2, art. 43.

16. Cf. Jean Rivière, *Le problème de l'église et de l'état au temps de Philippe le Bel* (Louvain and Paris, 1926), pp. 111-112; Fr. Schulte, *Die Stellung der Concilien, Päpste, und Bischöfe vom historischen und canonistischen Standpunkte* (Prague, 1871), pp. 253-268.

17. In his *De Renuntiatione Papae*; cf. Richard Scholz, *Die Publizistik zur Zeit Philipps des Schönen und Bonifaz VIII* (Stuttgart, 1903), pp. 63-64.

18. *De Potestate Regia et Papali*, chs. 6, 10, 19, 20, 23. For the origins of conciliarist ideas in the age of Philip the Fair, see two articles by H. X. Arquillière, 'L'Appel au concile sous Philippe le Bel et la genèse des théories conciliaires,' *Revue des questions historiques*, N.S., XLV (1911), 23-55; 'L'Origine des théories conciliaires,' *Séances et travaux de l'académie des sciences morales et politiques*, CLXXV (1911), 581 ff.

19. Marsiglio's and Occam's theories of church government cannot be disentangled from their theories of the relation of church and state; therefore cf. pp. 540-551 below.

20. See bibliography below, p. 647. Since the writings of d'Ailly and Gerson were the most comprehensive, and in general the most penetrating, our discussion of moderate conciliarist theory must particularly reflect their ideas.

21. *Defensor Pacis*, dictio 2, chs. 15-16, 18, 22; see translations below, pp. 598 ff.; 396 ff.

22. *Dialogus*, pt. 1, bk. 5, chs. 14-15; bk. 3, tr. 1, bk. 4; cf. below, pp. 546 f.

23. Dietrich of Niem, *De Modis Uniendi ac Reformandi Ecclesiam in Concilio Universalis*, in Gerson, *Opera*, vol. II (with wrong attribution), chs. 2, 5, asserted that the Roman church had the power of the keys only in so far as this had been conceded to it by the universal church.

24. Gerson, *De Potestate Ecclesiastica*, consids. 9, 10 (see below, pp. 410-412); *De Auferibilitate Papae*, consids. 8, 20.

25. *Tractatus de Reformatione, seu Canones Reformandi Ecclesiam*, in Gerson, *Opera*, vol. II, at p. 905; but this is a casual statement, not expanded.

26. *De Concordantia Catholica*, bk. 2, ch. 33.

27. *Ibid.*, bk. 2, chs. 9-12.

28. *Op. cit.*, pt. 3, tr. 1, bk. 2, chs. 20-27.

29. See esp. Gerson, *De Potestate Ecclesiastica*, consids. 7, 9; Cusa, *op. cit.*, bk. 3, ch. 41.

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30. *Op. cit.*, bk. 1, chs. 6, 15; bk. 2, ch. 18; cf. John of Paris, *op. cit.*, ch. 10.
31. *De Potestate Ecclesiastica*, consid. 9.
32. *Ibid.*, consids. 8, 12; Dietrich of Niem, *op. cit.*, ch. 17; Cusa, *op. cit.*, bk. 2, ch. 27; bk. 3, ch. 41; cf. Marsiglio, *op. cit.*, *dictio* 2, ch. 24.
33. Cf. Gerson, *Sermo Habitus XXI die Julii*, pt. 3, direction 2, tr. below; Cusa, *op. cit.*, bk. 2, chs. 9-10, 20.
34. *De Imperatorum et Pontificum Potestate*, ch. 14.
35. E.g., Antonius Rosellinus, *Monarchia seu de Potestate Imperatoris et Papae*, pt. 3, ch. 27.
36. *Octo Quaestionum Decisiones*, q. 1, ch. 17; q. 3, ch. 8; *Dialogus*, pt. 1, bk. 5, ch. 27; pt. 1, bk. 6, chs. 12-13, 57, 64, 69-72, 86.
37. *Dialogus*, pt. 1, bk. 6, ch. 84, tr. below.
38. Franciscus de Zabarellis, *Tractatus de Schismatibus Autoritate Imperatoris Tollendis*; Gerson, *De Potestate Ecclesiastica*, consid. 12; *De Auferibilitate Papae*, consid. 11, tr. below; *De Unitate Ecclesiastica*, consids. 2, 3, tr. below; d'Ailly, *Propositiones*, in Gerson, *Opera*, vol. II, p. 112. The right of a council to assemble itself in default of papal summons was asserted in the decree *Frequens* of the Council of Constance: text in Mirbt, *Quellen zur Geschichte des Papsttums und des Römischen Katholizismus* (4th ed. Tübingen, 1924), p. 228.
39. Gerson, *De Auferibilitate Papae*, consid. 16. This treatise is the most detailed and thoroughgoing analysis of the right of deposition.
40. E.g., Dietrich of Niem, *op. cit.*, chs. 5, 9; Cusa, *op. cit.*, bk. 2, chs. 17, 18.
41. D'Ailly, *De Ecclesiae, Concilii Generalis, Romani Pontificis, et Cardinalium Autoritate*, pt. 3, ch. 1.
42. Antonius Rosellinus, *op. cit.*, pt. 2, chs. 13-22; pt. 3, chs. 16-17.
43. Gerson, *De Auferibilitate Papae*; *Sermo Habitus XXI die Julii, 1415*, pt. 1, at p. 275; *De Potestate Ecclesiastica*, consids. 4, 8, 9, 11.
44. E.g., Gerson, *De Potestate Ecclesiastica*, consid. 11.
45. Decree of April 6, 1415; text in Mirbt, *op. cit.*, p. 228; Cusa denied that the council could abolish or suspend the papal authority to bind and loose in the court of conscience; *op. cit.*, bk. 2, ch. 18.
46. Decree of October 9, 1417; Mirbt, *loc. cit.*
47. *De Ecclesiae, Concilii Generalis, Romani Pontificis, et Cardinalium Autoritate*, pt. 2, chs. 1, 2.
48. *Sermo Habitus XXI die Julii, 1415*, pt. 3, direction 2; *De Potestate Ecclesiastica*, consids. 4, 11.
49. Cusa, *op. cit.*, bk. 2, ch. 14 and elsewhere; Gregory of Heimburg (see references in Gierke, *op. cit.*, n. 201); this doctrine was emphatically condemned by the ex-conciliarist Aeneas Sylvius as Pius II in the bull *Execrabilis*.
50. *Sermo Habitus XXI die Julii, 1415*, pt. 3, direction 2; a more detailed analysis in *De Potestate Ecclesiastica*, consid. 10.

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51. *Op. cit.*, bk. 2, ch. 18.
52. *Ibid.*, bk. 2, ch. 20.
53. *Op. cit.*, pt. 3, ch. 27.
54. Franciscus de Zabarellis, *op. cit.* p. 703.
55. D'Ailly, *De Ecclesiae, Concilli Generalis, Romani Pontificis, et Cardinalium Autoritate*, pt. 3, ch. 1.
56. *De Potestate Ecclesiastica*, consids. 10, 11.
57. *Sermo Habitus XXI die Julii*, pt. 3, direction 2.
58. Chapter V above.
59. Gerson, *Sermo Habitus XXI die Julii*, *loc. cit.*; d'Ailly, *De Ecclesiae, Concilli Generalis, Romani Pontificis et Cardinalium Autoritate*, pt. 2, ch. 1.
60. It was almost unanimously claimed by the conciliarists, following a long-established tradition, that Christ's promise to continue with His church would be fulfilled in the indeviability of the universal council or, at least, of a majority of the universal council. Occam, characteristically, envisaged the possibility that 'the whole multitude of Christians having the use of reason' might err because each individually was capable of error and sin; under these circumstances, 'the promises of Christ could be saved by the little baptized babies'; *Dialogus*, pt. 1, bk. 5, ch. 35. Some of the conciliarists specifically limited the infallibility of the council to matters of faith: e.g., d'Ailly in Gerson, *Opera*, vol. I, p. 661. In papalist theory, the infallibility of the council in matters of faith came to be associated with the presumption that it acted under the headship of the infallible pope; cf. Turrecremata, *op. cit.*, bk. 3, ch. 58. For the doctrine of infallibility in the Middle Ages, see Schulte, *op. cit.*, pp. 192-194, 253 ff.
61. Turrecremata, *op. cit.*, bk. 2, ch. 71, conclusions 4, 5, tr. below.
62. *Ibid.*, bk. 2, ch. 41, tr. below.
63. *Ibid.*, bk. 2, ch. 70, tr. below.
64. *Ibid.*
65. *Ibid.*, bk. 2, chs. 44, 97-103; bk. 3, chs. 51, 52.
66. *Ibid.*, bk. 2, chs. 82, 83; it would be more correct, Turrecremata says, to say 'that since in him alone is the totality and plenitude of all ecclesiastical power, the pope is, virtually, the whole church.'

### NOTES TO CHAPTER SEVEN *pages 430 to 466*

1. No single book completely covers the topic of medieval thought about the empire. The most nearly comprehensive is C. S. N. Woolf, *Bartolus of Sassoferrato* (Cambridge, 1913), which analyses in considerable detail the earlier and contemporary trends and theories which formed the background of Bartolus's interpretations; but some of Woolf's opinions need correction: cf. especially Walter Ullmann, 'The Development of the Mediaeval Idea of Sovereignty,' *English Historical Review*, LXIV (1949), 1-33. R. W. and A. J. Carlyle, *A History of Mediaeval Political Theory in the*



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*West*, collect a good deal of significant material, especially on early attitudes toward the empire and on the later development of the papalist theory. There is also useful material and comment in Jean Rivièrre, *Le problème de l'église et de l'état au temps de Philippe le Bel* (Louvain and Paris, 1926); R. Scholz, *Die Publizistik zur Zeit Philipps des Schönen und Bonifaz VIII* (Stuttgart, 1903) and *Unbekannte kirchenpolitische Streitschriften aus der Zeit Ludwigs des Bayern (1327-1354)* (2 vols., Rome, 1911-1914); Sigmund Riezler, *Die literarischen Widersacher der Päpste zur Zeit Ludwigs des Baiers* (Leipzig, 1874); Georges de Lagarde, *La naissance de l'esprit laïque . . .*, vol. IV, *Ockham et son temps* (St. Paul-Trois-Châteaux, 1942). Cf. also other references in footnotes below.

2. Especially II Thessalonians, 2:2, in which a 'falling away' [of kingdoms] and the coming of Antichrist were predicted as events that would precede the second coming of Christ. The notion that the breaking up of the Holy Roman Empire would initiate the era of Antichrist was particularly active after the wide dissemination of the prophetic works written by or attributed to Joachim of Flora (ca. 1200); cf. particularly its influence on Jordan of Osnabrück and Engelbert of Admont, discussed below. On the other hand, Aquinas, writing in the Interregnum, regarded the Roman empire as already dissolved and argued that the falling away of kingdoms which would lead to the appearance of Antichrist would be a falling away from the spiritual empire: that is, from the church, into which the temporal empire had already been transformed; cf. the passage from his commentary on the Epistles to the Thessalonians quoted Woolf, *op. cit.*, p. 325.

3. *De Civitate Dei*, bk. 4, chs. 3, 15; bk. 5, chs. 12, 17; bk. 19, chs. 13, 21 ff.

4. Ragewin, *Gesta Friderici I Imperatoris* (ed. Waitz, Hanover, 1884), bk. 4, ch. 86, p. 276, quoted Woolf, *op. cit.*, pp. 209-210.

5. Carlyle, *op. cit.*, vol. III, pp. 174-175, cites such a case in a letter of Frederick I; cf. a similar instance for Frederick II, *ibid.*, vol. V, p. 142.

6. Joseph Declareuil, *Histoire générale du droit français public et privé des origines à 1815* (Paris, 1926), vol. I, p. 508.

7. Cf. Woolf, *op. cit.*, p. 209.

8. *Ibid.*, p. 102. Woolf points out that the study of Roman law began the transformation of the idea of two régimes within a single society into the idea of church and state.

9. Cf. Carlyle, *op. cit.*, vol. IV, pp. 12-24, for early instances of such intervention.

10. The text of the Donation of Constantine is in Carl Mirbt, *Quellen zur Geschichte des Papsttums und des römischen Katholizismus* (4th ed., Tübingen, 1924), pp. 107-112. It is a fabricated document, probably of the eighth century, purporting to be a deed by which Constantine relinquished to Pope Silvester and his successors complete jurisdiction over the Lateran and 'the provinces, places, and cities of the city of Rome and all those of Italy or [in some later texts, and] of the regions of the West.' Its authenticity was rarely questioned in the Middle Ages, though its meaning and its

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validity were matters of frequent dispute. Apparently it was originally used only to apply to papal claims to Byzantine territories in Italy. Included without comment in some early collections of canons, it was omitted by Gratian but inserted in later MSS of the *Decretum*. Early commentators on the *Decretum* tended to ignore it, and its use in support of papal claims to secular power was for a long time only sporadic, vague, and limited. Gregory VII and Innocent III, for instance, never used it in this way. The first clear instance of the interpretation of the Donation as applying to the whole western empire seems to be in the *De Honore Ecclesiae* (1111) of the pro-papal writer Placidus of Nonantula. The first important use of the Donation appeared in the papal controversy with Frederick II. Gregory IX explicitly based his authority over the empire on the Donation, and Innocent IV made the first clear-cut statement of the theory which afterwards dominated papalist thinking: that the Donation was not a 'cession' but a 'recognition' of pre-existing papal right. Cf. Carlyle, *op. cit.*, *passim*; Rivière, *op. cit.*, *passim*; J. J. I. von Döllinger, *Die Papst-Fabeln des Mittelalters* (Munich, 1864). The authenticity of the Donation was attacked by Nicholas of Cusa in *De Concordantia Catholica*, bk. 3, ch. 2, and, more effectively, by Lorenzo Valla, *De Falso Credita et Ementita Constantini Donatione* (1439; text in Schard, *De Jurisdictione*. . . pp. 734 ff.).

11. Text in Mirbt, *op. cit.*, pp. 175-177.

12. Quoted Carlyle, *op. cit.*, vol. V, p. 142.

13. See Frederick's encyclical letter of 1245 following his deposition by the Council of Lyons, quoted at length *ibid.*, vol. V, p. 303, n. 1.

14. Rivière, *op. cit.*, pp. 42-43.

15. Part of Innocent IV's answer, written late in 1245, to Frederick's complaints about his deposition, quoted at considerable length Carlyle, *op. cit.*, vol. V, pp. 307-309, n. 1.

16. Letter of Gregory IX to Frederick, 23 Oct., 1236, quoted *ibid.*, vol. V, pp. 276-277, n. 1.

17. Text in Mirbt, *op. cit.*, pp. 174-175.

18. Carlyle, *op. cit.*, vol. V, pp. 319-324.

19. *Paradiso*, c. 30, l. 137; cf. *ibid.*, c. 17, ll. 80-90; for an analysis of the imperialism of Petrarch and other Italians of the period, see Woolf, *op. cit.*, pp. 307-312.

20. For the problem of authorship, see *ibid.*, pp. 227 ff., and Herbert Grundmann's introduction to his edition: *Alexander von Roes, De Translatione Imperii, und Jordanus von Osnabrück, De Prerogativa Romani Imperii* (Leipzig, 1930).

21. But cf. pp. 213 f. above for the controversy about Dante's exact meaning.

22. Carlyle, *op. cit.*, vol. V, pp. 324-337.

23. *Determinatio Compendiosa de Jurisdictione Imperii*, *passim*; *De Regimine Principum*, bk. 3, chs. 16-19.

24. *Determinatio Compendiosa*, ch. 10; Marius Kramer, in the preface to his edition of this work (Hanover and Leipzig, 1909), dates it in 1281, when the Lucchese were re-

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sisting the authority of the vicar of Rudolph of Hapsburg on the ground that, though duly elected and supported by papal approval, Rudolph had not yet entered into his imperial rights in default of formal confirmation and coronation; accordingly, Tholommeo would appear to be defending the rights of the Lucchese in opposition to both pope and emperor. However, the date of the *Determinatio Compendiosa* is not finally established. Cf. Rivière, *op. cit.*, pp. 159-160.

25. Carlyle, *op. cit.*, vol. V, pp. 142-145, 320; Ullmann, *op. cit.*, pp. 9-10.

26. Text in *M. G. H., Leges*, sec. IV, vol. IV, I, pp. 139-140; cf. Woolf, *op. cit.*, pp. 302-335; Rivière, *op. cit.*, pp. 320ff.

27. *Non Ponant Laici* (1302); text in Scholz, *Die Publizistik*. . . , pp. 475-476.

28. Declareuil, *op. cit.*, pp. 430-433; Ullmann, *op. cit.*, pp. 7-13.

29. *De Recuperatione Terre Sancte*; this interesting work is a discovery of the nineteenth century.

30. *Quaestio de Utraque Potestate*, art. 5 (Goldast, *Monarchia*, vol. II, at p. 106); *Rex Pacificus* (Dupuy, *Histoire du Différend*. . . , *Preuves*, at p. 675); John of Paris, *De Potestate Regia et Papali*, chs. 15, 21. Under the legal phrasing of the arguments, one can perhaps detect a feeling that authority is a matter of historical development and actual experience. It is not something eternally fixed; nor is it something that can be ceded or delegated from hand to hand. Constantine could not give away the empire; but the kings of France, through their merits, could establish their independence against it. This is straining the Roman law notion of prescription; but the author, or authors, of *Rex Pacificus* may have half consciously felt that the very nature of developing statehood required the strain. The same attitude and the same dilemma underlie the later pro-German thesis of Lupold of Bebenburg: see below, pp. 460 ff.

31. *Disputatio inter Clericum et Militem* (Schard, *De Jurisdictione*. . . , at p. 686).

32. *Op. cit.*, chs. 13, 18.

33. Ullmann, *op. cit.*, pp. 17 ff.

34. The lines of influence between French and Sicilian opinion remain obscure; but one can presume some contact between lawyers of the two Angevin kingdoms.

35. 'It was this phrase alone which could sever the connection between the Empire and Imperial law, and which could make arguments adduced for an Emperor applicable to other secular powers. At the same time it conveniently shelved the problem of de facto or de jure independence; grant that the Rex is "Imperator regni sui" and the question whether he be so de facto or de jure might be interesting, and even vital, to national pride, but was not of practical consequence. It was thus the lawyer's solution.' Woolf, *op. cit.*, p. 379.

36. The following summary is based on Woolf's detailed analysis, *op. cit.*, pp. 107-208; cf. also Myron P. Gilmore, *Argument from Roman Law in Political Thought, 1200-1600* (Cambridge, Mass., 1941), 36-44.

37. *Defensor Pacis*, *dictio* 1, ch. 17, sec. 10, tr. above, p. 235.

38. *Ibid.*, *dictio* 2, ch. 18, sec. 8; ch. 21, secs. 1, 4, 7, 11; ch. 28, sec. 14.

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39. *Defensor Minor*, ch. 12, sec. 1; cf. sec. 3.
40. July 16, 1338; text in Mirbt, *op. cit.*, p. 223.
41. August 6, 1338; text *ibid.*, pp. 223-224.
42. Hermann Meyer, *Lupold von Bebenburg* (Freiburg im Breisgau, 1909), p. 1.
43. *De Juribus Regni et Imperii Romani*, ch. 19.
44. *Ibid.*, ch. 13.
45. *Ibid.*, ch. 10.
46. *Ibid.*, ch. 12.
47. See above, pp. 310-312.
48. *Op. cit.*, ch. 5.
49. Pt. 3, tr. 2, bk. 1, covers the general question of the desirability of world monarchy and includes material on the origin of the empire, the Donation of Constantine, and the *translatio*; pt. 3, tr. 2, bk. 2, examines the question whether the jurisdiction of the emperor extends over the whole earth.
50. See above, pp. 14 f.
51. His position is analysed at length in Scholz, *Unbekannte kirchenpolitische Streit-schriften*. . . , pp. 79-140.
52. Text in K. Zeumer, *Quellensammlung zur Geschichte der deutschen Reichsverfassung in Mittelalter* (Leipzig, 1904), p. 170.
53. *Monarchia*. . . , bk. 2, chs. 5-7.
54. Tr. below.
55. Bk. 3, ch. 6. Wyclif, *De Officio Regis*, ch. 10, remarks that 'in the civil state, the authority of the ruler is granted him by human election. . . . It seems to me that reason prescribes . . . that each people should choose a single head for itself, even as we English have one blessed king. . . .' The Roman empire, Wyclif continues, was once expedient and legitimate, 'and thus it would be rational now if reason did not oppose it.' 'England, with other kingdoms of the same sort, ought to be separate from the Roman empire': partly because 'it does not live imperially as it ought,' and also because 'lordship over kingdoms is not legitimate unless governance corresponds to lordship; but islands, such as England, are not easily capable of imperial government on account of the difficult distance from the Mediterranean realms.'

### NOTES TO CHAPTER EIGHT *pages 506 to 557*

1. 'The peculiar problem of Church and State' was 'the greatest perturbation which has ever drawn men's thoughts about the state out of their proper political orbit, and for many ages the most powerful stimulus to all political speculation. . . . For the half-millennium between the eleventh and the seventeenth century it is not too much to say that the bulk of all the writings which we may term political was directly and primarily concerned with the great controversy between the spiri-



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tual and the secular authority.' McIlwain, *The Growth of Political Thought in the West*, pp. 146-147.

2. Cf. J. N. Figgis, 'Respublica Christiana,' *Transactions of the Royal Historical Society*, 3rd ser., vol. V (London, 1911), pp. 63-88, reprinted as an appendix to his *Churches in the Modern State*, (London, 1913), pp. 175-226.

3. Ambrose to Valentinian II, quoted Carlyle, *A History of Mediaeval Political Theory in the West*, vol. I, p. 180; but Optatus in the same period warned the Donatists to remember that the church was in the state and not *vice versa*, and that God alone was above the emperor; quoted *ibid.*, vol. I, pp. 148-149.

4. 'There are, O august Emperor, two powers by which principally this world is ruled: the sacred authority of pontiffs and the regal power. Of these, the obligation of the priests is the weightier, in proportion as they must give account to God for the kings of men themselves. For know, O most clement son, that although you preside in dignity over the human race, yet you devoutly bend your neck to those who preside over divine things, and expect from them the causes of your salvation, and are aware that in regard to the due administration of the celestial sacraments you ought to be subject to them . . . rather than to rule, and that in these matters you therefore depend upon their judgment, and that they refuse to be subdued to your wish. For if the high priests of religion themselves, knowing the empire bestowed upon you by supernal disposition, obey your laws in matters pertaining to the order of public discipline . . . , with what feeling is it proper to obey them, who are assigned to the special charge of venerable mysteries? . . .' Gelasius I, Epistle 12 to Anastasius, 494 A.D.; text in Mirbt, *Quellen zur Geschichte des Papsttums und des römischen Katholizismus* (4th ed., Tübingen, 1924), p. 85.

5. See p. 145 above for the complete passage; cf. also quotations from Damian and from Jonas of Orleans, Carlyle, *op. cit.*, vol. III, p. 101, and vol. I, p. 255.

6. *Ibid.*, vol. IV, p. 24, n. 1.

7. Élie Voosen, *Papauté et pouvoir civil à l'époque de Grégoire VII* (Gembloux, 1927), p. 11, n. 27.

8. The ninth-century movement associated with the production of the False Decretals worked towards a strengthening of the relations between the Frankish bishops and the Roman see. Emperors of the tenth and eleventh centuries sporadically tried to purge the worst symptoms of worldliness in the clergy, though of course without attacking the root of the problem. Most vigorous of the reform movements was that which centred in the monasteries of the Cluniac Order, founded in 910,—a federated, self-governing order, exempt from diocesan rule, which became the spear-head of attacks on the secular spirit of the clergy and of a growing demand for their emancipation from secular control.

9. Collected in the three volumes of *MGH, Libelli de Lite* (Hanover, 1891-1897).

10. Neither in the decree of 1076 nor in that of 1080 was the deposition of Henry based on his excommunication; in both the sentence of excommunication appears

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as a separate act, and in that of 1076 the sentence of excommunication comes after the deposition: Jean Rivi re, *Le probl me de l' glise et de l' tat au temps de Philippe le Bel* (Louvain, 1926), pp. 9-10.

11. In his famous letter of 1081 to Hermann, Bishop of Metz; see p. 144 above.

12. Cf. Carlyle, *op. cit.*, vol. III, pp. 94-96, 105.

13. I Corinthians, 6:3.

14. *MGH, Constitutiones*, vol. I, no. 62, quoted Carlyle, *op. cit.*, vol. IV, p. 186, n. 1.

15. The debate also influenced the development of the canon law, for the papalists tended to pick out the canons that supported their position and in turn used this support as evidence of the authenticity of the canonical authority; Voosen, *op. cit.*, pp. 90-91.

16. See pp. 166-168 above.

17. *Libelli de Lite*, vol. II, pp. 173 ff.

18. Chs. 18, 25; see tr. below.

19. See the translation below from the fourth tractate, *Libelli de Lite*, vol. III, pp. 662 ff. at pp. 663-668.

20. *Ibid.*, p. 671; an exception was made for those who did not rule by the grace of God, who were not kings but tyrants; *ibid.*, p. 666.

21. The fifth and sixth tractates, *ibid.*, pp. 680 ff., especially deal with the position of the pope; the quotations are from pp. 686-687.

22. *Radulfi de Diceto . . . Opera Historica (Rolls Series)*, vol. I, p. 343, quoted McIlwain, *op. cit.*, p. 228.

23. Quoted Carlyle, *op. cit.*, vol. II, p. 198.

24. On these, see P. Fournier, ' tudes sur les fausses d cr tales,' *Revue d'histoire eccl siastique de Louvain*, VII (1906), 33 ff., 301 ff., 543 ff., 761 ff.; VIII (1907), 19 ff.

25. See p. 338, n. 14 above.

26. *De Consideratione*, bk. 4, ch. 3, sec. 7 (Migne, *PL*, vol. CLXXXII, p. 776). Previous allusions to the two swords, e.g., Honorius Augustodunensis, *op. cit.*, ch. 26, had used the symbol simply to express differentiation of function.

27. See Rivi re, *op. cit.*, pp. 405-423, for the later history of Bernard's statements. Supporters of the secular power fitted the two-swords passage into their discussion by pointing to its context and by emphasizing that the material sword was not to be drawn by the hand of the church; John of Paris seized on the phrase '*ad nutum*,' pointing out that it did not imply an authoritative command: *De Potestate Regia et Papali*, ch. 19.

28. *De Sacramentis*, bk. 2, pt. 2, ch. 4 (Migne, *PL*, vol. CLXXVI, p. 418).

29. Bk. 4, ch. 3.

30. Bk. 4, ch. 1.

31. See John Dickinson, *The Statesman's Book of John of Salisbury* (New York, 1927), intro., pp. lviii-lxvi, for a summary of the controversy and a cautious statement.

32. *De Summo Pontifice (Opera Omnia)*, Venice, 1721-1728, vol. I), bk. 5, ch. 5.

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33. See in particular Carlyle's careful examination of all the relevant passages, *op. cit.*, vol. V, pp. 348-354; Rivière, *op. cit.*, pp. 48-50; Bellarmine, *op. cit.*, bk. 5, ch. 5.

34. *De Regimine Principum*, bk. 1, ch. 14; cf. the more precise statement in *Summa Theologiae*, 2a 2ae, q. 60, art. 6: 'The secular power is subject to the spiritual as the body to the mind . . . and therefore it is not a usurpation of jurisdiction if a spiritual officer intervenes in temporal matters to the extent of those in which the secular power is subject to him or which have been conceded to him by the secular power' (italics mine).

35. *Summa Theologiae*, 2a 2ae, q. 10, art. 10. The point at issue was the legitimacy of an already existent lordship of infidels over believers; Aquinas's solution was that 'the distinction between believers and unbelievers does not in itself destroy lordship and rule over believers. But such lordship can justly be abolished through the decision or order of the church. . . . This the church sometimes does, and sometimes does not do.' Cf. *ibid.*, q. 12, art. 2, where a similar argument establishes the right of the church to depose an apostate Christian ruler 'sententially, even as sometimes on account of other sins.'

36. Tr. below, pp. 566 f.

37. On canonist theory, see particularly Walter Ullmann, *Medieval Papacy: The Political Theories of the Medieval Canonists* (London, 1949). There is useful material in Carlyle, *op. cit.*, *passim*, and Gierke, *Political Theories of the Middle Age*, pp. 11 ff. and notes.

38. Above, p. 439.

39. Text in Charles Bémont, ed., *Chartes des libertés anglaises (1100-1305)* (Paris, 1892), pp. 41-44; cf. G. B. Adams, 'Innocent III and the Great Charter,' in H. E. Malden, ed., *Magna Carta Commemoration Essays* (London, 1917); Ullmann, *op. cit.*, pp. 71 ff.

40. *Decretal Novit*, text in Mirbt, *op. cit.*, pp. 177-178.

41. Text *ibid.*, pp. 176-177. Innocent based his assertion on Deuteronomy 17:8-12, which he interpreted as follows: 'They distinguish between three kinds of judgment: the first, between blood and blood, which is understood to mean civil crimes; the last, between leper and leper, which is understood to mean ecclesiastical crimes; the middle, between cause and cause, which refers to the kind of judgment that is both ecclesiastical and civil: in which, if there is anything difficult or ambiguous, recourse should be had to the judgment of the apostolic see.' The passage is difficult and has been variously interpreted. If the last 'which' refers to all three kinds of judgment, Innocent's claim is broader, though still casual; the fact that Innocent rearranged the order of the three kinds of judgment suggests that he meant to claim casual jurisdiction only in regard to 'the judgment between cause and cause.'

42. Migne, *PL*, vol. CCXVII, p. 665; for a careful and comprehensive analysis of Innocent's position, see Carlyle, *op. cit.*, vol. V, pt. II, chs. I and II.

43. Ullmann, *op. cit.*, pp. 142-144.

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44. Quoted McIlwain, *op. cit.*, p. 232, n. 1; for Alanus's theory see Ullmann, *op. cit.*, pp. 146-149.

45. Carlyle, *op. cit.*, vol. V, pp. 318-324 (an analysis of Innocent's position as a canonist, illustrated by quotations from his *Apparatus ad Quinque Libros Decretalium*).

46. This claim applied specifically to a court within the empire; Innocent distinguished between the pope's special rights with regard to the empire, which the emperor held from him as his advocate and to whose jurisdiction he therefore succeeded when the empire was vacant, and other princes 'having no superior,' to whose jurisdiction in case of negligence he also succeeded, 'but not because they hold their kingdoms from him, but because of the plenitude of power which he has as vicar of Christ.' *Ibid.*, p. 322, n. 1.

47. Pp. 438 f. above.

48. Quoted Carlyle, *op. cit.*, vol. V, p. 335, n. 1, from Durand's *Speculum*.

49. *Summa Titulorum*, bk. 4, tit. 19, ch. 9.

50. Texts in Mirbt, *op. cit.*, pp. 208ff.

51. *Unam Sanctam* is often assumed to be a thorough-going assertion of direct power in temporals. However, one must distinguish between the exposition and the doctrinal pronouncement itself. The exposition, closely following Aegidius's wording, lays the groundwork for an extreme conclusion. After setting forth the unity of the church and the unity of its head, the bull continues:

'We are taught by the sayings of the gospels that there are two swords in his power: namely, the spiritual and the temporal. For when the apostles said, "Behold, here are two swords" (namely, in the church, since the apostles were speaking), the Lord did not answer, "It is too much," but "It is enough." Certainly he who denies that the temporal sword is in the power of Peter pays no heed to the word of the Lord, Who said "Put back thy sword into thy sheath." Therefore both the spiritual and the material sword are in the power of the church, but the latter, indeed, to be used for the church, the former by the church; the former by the hand of the priest, the latter by the hand of kings and knights, but at the indication and sufferance of the priest. Moreover, it is necessary that sword be under sword and temporal authority subjected to spiritual power. For when the apostle says, "There is no power but of God and the powers that be are ordained by God," they would not be ordained if sword were not under sword and the inferior reduced to the supreme through another. For, according to the blessed Dionysius, the law of divinity is that the lowest things are reduced to the supreme through the intermediate. . . . Moreover, that the spiritual power excels any earthly power in dignity and nobility must be the more clearly affirmed in proportion as spiritual matters excel temporal matters. And this we see with clear eyes from the paying of tithes, from benediction and sanctification, from the way in which power is received, and from the government of things themselves. For, by the testimony of truth, the spiritual power has the institution of the earthly power, and its judgment if it shall not have been good. Thus the prophecy of Jeremiah the prophet, "Behold, I



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have set thee today over peoples and kingdoms," etc., is verified in regard to the church and ecclesiastical power.

"Therefore, if the earthly power deviates, it will be judged by the spiritual power; if a lesser spiritual power deviates, by its superior; if, however, the highest spiritual power deviates, it can be judged by God alone and not by man, as the apostle bears witness: "The spiritual man judges all things; he himself is judged by no one." Moreover, this authority, though given to man and exercised by man, is not a human but rather a divine power, given by the divine lips to Peter himself and to his successors in Christ, Whom he had confessed, founded on a rock, through the saying of the Lord to Peter, "Whatsoever thou shalt bind," etc. Therefore, whoever resists the power thus ordained by God resists the ordination of God, unless like a Manichæan he imagines that there are two first principles, which we judge to be false and heretical. For, by the testimony of Moses, not "in the beginnings," but "in the beginning God created the heaven and the earth."

"Therefore, we declare, we affirm, we define and pronounce that for every human creature it is absolutely necessary for salvation to be subject to the Roman pontiff."

In the context, this last sentence must appear as one of the most remarkable antitheses known to history. Cf. Rivière, *op. cit.*, pp. 394-404, for the relation between *Unam Sanctam* and the treatise of Aegidius Romanus.

52. McIlwain, *op. cit.*, pp. 246-247.

53. Letter of the French clergy to Boniface VIII, in Dupuy, *Histoire du différend d'entre le Pape Boniface VIII et Philippe le Bel Roy de France* (Paris, 1655), *Preuves*, p. 68.

54. *Antequam Essent Clerici*, in Dupuy, *op. cit.*, pp. 21-23. Dupuy presents it as Philip's answer to Boniface, but there is no evidence it was ever delivered to the pope; see McIlwain, *op. cit.*, pp. 240-241; Rivière, *op. cit.*, p. 98, n. 1.

55. Dupuy, *op. cit.*, pp. 27-28.

56. *Ibid.*, pp. 663-683, under the title *Quaestio de Potestate Papae*.

57. See selection tr. below.

58. Aegidius Romanus, *De Potestate Ecclesiastica*; James of Viterbo, *De Regimine Christiano*; see selections tr. below. To these one may add the rather mechanical treatise of Henry of Cremona, *De Potestate Papae* (1301), and his *Non Ponant Laici* (1302), ed. R. Scholz, *Die Publizistik zur Zeit Philipps des Schönen und Bonifaz VII* (Stuttgart, 1903), pp. 459-471, 475-476.

59. See above, pp. 103 f., 112-115.

60. *Op. cit.*, pt. 1, chs. 5, 6.

61. *Op. cit.*, pt. 2, ch. 6, partly tr. below.

62. *Ibid.*, pt. 2, ch. 7, partly tr. below.

63. *Ibid.*, pt. 2, chs. 3, 4.

64. *Ibid.*, pt. 1, ch. 1; pt. 2, ch. 9.

65. Aegidius Romanus, *op. cit.*, pt. 2, ch. 14; pt. 3, ch. 2; James of Viterbo, *op. cit.*, pt. 2, chs. 8, 10.

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66. James of Viterbo, *op. cit.*, pt. 2, ch. 8.
67. Aegidius Romanus, *op. cit.*, pt. 3, ch. 7.
68. *Ibid.*, pt. 3, ch. 4; cf. James of Viterbo, *op. cit.*, pt. 2, ch. 8.
69. *Op. cit.*, pt. 3, chs. 4-8.
70. *Ibid.*, pt. 3, ch. 7.
71. *Ibid.*, pt. 3, ch. 8.
72. *Ibid.*, pt. 3, ch. 5.
73. *Ibid.*, pt. 3, ch. 8.
74. *Op. cit.*, pt. 2, ch. 8.
75. The *Quaestio de Utraque Potestate* is in Goldast, *Monarchia . . .*, vol. II, pp. 96-107, erroneously attributed to Aegidius Romanus; an abridged text of the Gloss on *Unam Sanctam* is printed as an appendix to Heinrich Finke, *Aus den Tagen Bonifaz VIII* (Münster, 1902), pp. c-cxvi.
76. See Rivière, *op. cit.*, ch. IV, for a convenient résumé of the chief arguments, rebuttals, and surrebuttals of both sides.
77. Above, p. 453.
78. John 18:36.
79. *De Potestate Regia et Papali*, chs. 8, 9.
80. *Ibid.*, ch. 18.
81. *Ibid.*, ch. 5, partly tr. below, ch. 17, and *passim*.
82. *Ibid.*, chs. 1, 2, 12, and 13, partly tr. below.
83. *Ibid.*, ch. 17.
84. *Ibid.*, ch. 5.
85. *Ibid.*, ch. 18.
86. *Ibid.*, ch. 16.
87. *Ibid.*, ch. 19.
88. *Ibid.*, ch. 17, partly tr. below.
89. Cf. pp. 456 ff. above.
90. Alvarus was a Spaniard, a Franciscan, and an expert canonist; he was for a time the confessor of John XXII; his widely-circulated treatise (1330-1332) incorporated, among other things, much of the argument of James of Viterbo.
91. Some of Dante's writings seem to testify to his previous acceptance of a traditional moderate Gelasianism; in the *Commedia* he seems to have given up the extreme dualism implied in the *De Monarchia*, but the interpretation of the political thought of the *Commedia*, expressed in poetic symbols whose meaning often remains uncertain, must be left to the controversies of specialists. A. Passerin d'Entrèves, *Dante as a Political Thinker* (Oxford, 1952), is a useful introduction, with bibliographical notes, to the problem of the changes in Dante's opinion.
92. See above, pp. 486-495.
93. Partly tr. below.
94. Étienne Gilson, *Dante et la Philosophie* (Paris, 1939), ch. III, argues that this was Dante's position; his argument seems to me cogent but not conclusive.

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95. In one of his letters, quoted Carlyle, *op. cit.*, vol. V, p. 158, Innocent III wrote: 'As God . . . established two great lights in the firmament of the sky, . . . so in the firmament of the universal church . . . He established two great dignities, the greater to rule souls as the sun rules the days, the lesser to rule bodies as the moon rules the nights; and these are the pontifical authority and the royal power. Moreover, as the moon derives her light from the sun and is inferior to it in size and quality, in station and in effect, so the royal power derives from the pontifical authority the splendour of its dignity. . . .' Innocent III did not deduce from this analogy a theory of the derivation of the temporal from the spiritual power, but this passage was so interpreted by the canonists. Dante's refutation, *De Monarchia*, bk. 3, ch. 4, is partly tr. below; cf. John of Paris, *op. cit.*, ch. 14.

96. The following interpretation of Marsiglio's theory owes much to Georges de Lagarde, *La naissance de l'esprit laïque au déclin du moyen âge*, vol. II, *Marsile de Padoue* . . . (1934), and Richard Scholz, 'Marsilius von Padua und die Genesis des modernen Staatsbewusstseins,' *Historische Zeitschrift*, CLVI (1937), 88–103.

97. *Defensor Pacis*, *dictio* 2, ch. 7, sec. 3, tr. below.

98. *Ibid.*, *dictio* 2, ch. 6, sec. 12, tr. below. In so far as excommunication meant exclusion from the sacraments, Marsiglio in the *Defensor Pacis* (ch. 7, sec. 1) left it within the discretion of the priest; in the *Defensor Minor*, however, he argued that no priest had the right to exclude a sinner from the church: ch. 10.

99. Note the role of the priest in the choice of candidates for holy orders, *Defensor Pacis*, *dictio* 2, ch. 17, sec. 14; the importance of the priest in the general council, *ibid.*, *dictio* 2, ch. 20, sec. 3.

100. *Ibid.*, *dictio* 2, chs. 15–17, partly tr. below.

101. Note that Marsiglio did not anticipate the Protestant distinction between the external church and the invisible community of believers; in this he was less radical than Occam.

102. Marsiglio's characteristic lack of interest in the point, in the hierarchy of derived authority, at which a given power is actually wielded, in contrast to his clear insistence that all power be construed as proceeding from the *legislator* and *via the pars principans*, results in a continual ambiguity in *dictio* 2; it is not impossible that Marsiglio expected the clerical hierarchy to continue to control religious affairs much as it had always done, with the difference that it should recognize that its jurisdiction derived from the ruler and was subject to his supervision and intervention.

103. See pp. 457 f. above and *Defensor Pacis*, *dictio* 2, chs. 20–22, partly tr. above, pp. 392–398.

104. 'The faithful human legislator without a superior, or the person or persons to whom this power has been entrusted by the aforesaid legislator': *ibid.*, *dictio* 2, ch. 21, sec. 1; 'the primary faithful human legislator or the prince who rules by its authority': sec. 8; cf. ch. 22, sec. 6; see also p. 621, n. 38, above.

105. In *dictio* 1, ch. 5, secs. 10–12, tr. above, pp. 187 f., Marsiglio outlined a theory

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of religion as necessary to the cultivation of civic virtue even in a pagan state; some modern commentators have overemphasized the importance of this passage. Marsiglio continued, in ch. 6, with a discussion contrasting the Christian priesthood, based on the revelation of the true God, with the pagan priesthood; it is significant that throughout *dictio* 2 the theme of civic religion does not reappear; there is the constant theme that the interests of the secular society must be protected against possible arbitrary injury by the priesthood, but there is also the constant theme that the Christian rites and the maintenance of divine law are of absolute importance because the salvation or damnation of men's souls is at stake. In the *Defensor Minor*, ch. 15, Marsiglio defended himself against the charge of subjecting divine law to human law; his position was that 'although it does not belong to the human legislator . . . to create or establish spirituals, since these are nothing else than the injunctions or permissions of God Himself, yet it belongs to the human legislator and judge to judge with coercive judgment concerning all the acts licitly or illicitly done or not done by men, laymen or priests . . . in regard to spiritual things as well as in regard to temporal things, except for matters essentially spiritual.' 'The human legislator, far from usurping the power of the divine legislator, becomes his assistant.' As Lagarde points out, *op. cit.*, pp. 271 ff., the degree of ecclesiastical organization and practice that Marsiglio restored upon a new legal footing could not possibly be based on the mere premise of the utility of a civic religion. Lagarde thinks this subjection of the state to the service of religious goals was inconsistent with Marsiglio's original premise that politics and morals were unrelated; *ibid.*, p. 271; but was this Marsiglio's premise? Cf. Scholz's comment on Lagarde, 'Marsilius von Padua . . .', pp. 99-100.

106. Not entirely, since access of the clergy to all channels of propaganda and pressure is still preserved; but the effect of this may be nullified by the ruler's control over the selection, assignment, and discipline of the clergy.

107. See above, pp. 217 f. and notes.

108. On the other hand, there was, of course, an ideological background for this in the old tradition of the undifferentiated *respublica Christiana* in which the ruler was ordained by God to bear the coercive sword within the church. The influence of this tradition is not conspicuous in the *Defensor Pacis* but is prominent in the *Defensor Minor*; cf. Lagarde, *op. cit.*, pp. 277 ff.

109. Following an analysis of *dictio* 2 which on the whole agrees with that given here, McIlwain speaks of Marsiglio's system as a 'thorough-going dualism': *op. cit.*, p. 314. I am unable to imagine why.

110. *De Imperatorum et Pontificum Potestate*, ch. 8, tr. below.

111. *Dialogus*, pt. 1, bk. 5, where the treatment is indecisive; pt. 3, tr. 1, bk. 4, where the divine origin of the primacy is accepted as a matter of faith. Elsewhere, as in the *De Imperatorum* . . ., Occam commonly speaks of 'the power Christ gave Peter.' The question of the necessity or desirability of monarchy in the church is treated in *Dialogus*, pt. 3, tr. 1, bk. 2.



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112. *Dialogus*, pt. 3, tr. 1, bk. 1, ch. 17.
113. *De Imperatorum . . .*, chs. 3, 13-16; *Octo Quaestionum Decisiones*, q. 1, ch. 15; q. 3, ch. 9.
114. *De Imperatorum . . .*, ch. 9.
115. *Octo Quaestionum . . .*, q. 1, and *Dialogus*, pt. 3, tr. 1, bk. 1, deal exhaustively with the extent of papal power; Occam's position is summarized in the selection from the *De Imperatorum . . .* tr. below.
116. *Dialogus*, pt. 3, tr. 2, bk. 1, ch. 30; *De Imperatorum . . .*, ch. 11.
117. See p. 307 above.
118. *Octo Quaestionum . . .*, q. 3, ch. 8; *Dialogus*, pt. 1, bk. 1, ch. 17; *De Imperatorum . . .*, ch. 10.
119. *De Imperatorum . . .*, ch. 13. E. F. Jacob, *Essays in the Conciliar Epoch* (Manchester, 1943), p. 105, points out that the reference here is to expert juriconsults and criticizes McIlwain (*op. cit.*, p. 296) for reading into it the Protestant notion of 'private judgment.' It is private judgment only in the sense that it is the judgment of private persons rather than of authoritative officers; but, as Jacob does not observe, something very like the Protestant conception of private judgment does come into Occam's theory when he examines the possibility that heresy might infest the whole official structure of the church.
120. Pp. 159, 161 f. above.
121. These principles are obviously like those of John of Paris, but Occam develops them more extensively. In particular, his case for the subjection of the clergy within the empire to imperial jurisdiction includes, as Figgis points out in *The Divine Right of Kings* (2nd ed., Cambridge, 1914), p. 55, a striking early statement of the necessity of the territorial integrity of a realm:
- ' . . . If the community of the faithful has two parts, one of which has one supreme judge and the other another, that community is in near peril of dissolution. Authority does not suffer a consort, neither over the same subjects nor, also, in the same place; for as no judge wills that his subjects be subjects of another, so no judge wills that another have power in the place where his subjects dwell. Therefore, the society of the faithful is in danger . . . if more than one supreme judge has been established in the same place, even over different Christian subjects. And thus it is not expedient that the clergy have one supreme ecclesiastical judge, namely, the pope, and the laymen one supreme judge, namely, the emperor; since clergy and laymen live together in the same place. . . . No community of those who live together in political life is best ordained unless it is civilly one. Thus the faithful, even as they are one body in Christ (Romans 1:2), ought also to be a body or college in civil life.'
- Dialogus*, pt. 3, tr. 2, bk. 3, ch. 19.
122. *Ibid.*, pt. 3, tr. 1, bk. 2, chs. 20-30.
123. *Ibid.*, pt. 3, tr. 2, bk. 3, chs. 4-13; see the selection from ch. 6 tr. above, pp. 80-85.

## NOTES

124. Occam's theory of the council is particularly developed *ibid.*, pt. 1, bk. 6; see the selection from bk. 6, ch. 84, tr. above, pp. 399-402.
125. *Ibid.*, pt. 1, bk. 5, chs. 29-35; pt. 1, bk. 6, ch. 85; pt. 3, tr. 2, bk. 3, chs. 4-15.
126. *Breviloquium*, bk. 5, ch. 4.
127. On the significance of this distinction in Occam's thought and its philosophical basis, see R. Scholz, *Wilhelm von Ockham als politischer Denker und sein Breviloquium de principatu tyrannico* (Leipzig, 1944), pp. 21 ff.; Léon Baudry, 'Le philosophe et le politique dans Guillaume d'Ockham,' *Archives d'histoire doctrinale et littéraire du moyen âge*, XIV (1939), 209-230; cf. pp. 207 f. above.
128. *Dialogus*, pt. 1, bk. 5, ch. 35; cf. *Breviloquium*, bk. 6, ch. 4, where Occam suggests the possibility of error in all but one bishop.
129. *Dialogus*, pt. 3, tr. 2, bk. 3, deals with imperial rights in spirituals; cf. *Octo Quaestionum* . . . , q. 1, ch. 17, and q. 3, ch. 8, and *De Imperatorum* . . . , ch. 12.
130. *Octo Quaestionum* . . . , q. 8, ch. 5; cf. *ibid.*, q. 1, ch. 11, and *Dialogus*, pt. 3, tr. 2, bk. 3, chs. 2, 4.
131. *Dialogus*, pt. 1, bk. 5, chs. 25-28.
132. Occam particularly applies this rule to 'whatsoever' in Christ's commission to Peter: see *De Imperatorum* . . . , ch. 11; *Breviloquium*, bk. 2, ch. 14.
133. *De Imperatorum* . . . , preface.
134. See above, pp. 104-106, 127-130.
135. Bk. 2, chs. 113-116.
136. Cf. Robert Hull, *Medieval Theories of the Papacy and Other Essays* (London, 1934), chs. VIII, IX.

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## BIBLIOGRAPHICAL NOTE

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THE following bibliography has no pretensions to any sort of completeness; it is offered simply as a springboard for those interested in further study of medieval political thought. References to material focused on some particular topic seemed most appropriately given in footnotes to the text to which they were relevant and will in general not be repeated here. But it may be helpful to list, with some comment, the more valuable general works; some material essential to an understanding of the origins and intellectual context of medieval political thought; the available texts of the most important of medieval publicistic writings; and the most helpful secondary commentaries dealing with particular periods or particular publicists. Further bibliography will of course be found in the books and articles suggested here.

### I. GENERAL SURVEYS

The history of medieval political thought is still a developing field of study. Many of the earlier summary treatments are no longer very useful to the unsophisticated reader; all general surveys necessarily include some interpretation that is controversial. Most valuable to the present-day student are Otto Gierke, *Political Theories of the Middle Age*, tr. F. W. Maitland (Cambridge, 1927), a section of vol. III of Gierke's massive *Das deutsche Genossenschaftsrecht* (4 vols., Berlin, 1868-1913), built around a questionable central thesis and not always reliable on subordinate points of interpretation, nevertheless remarkable in insight and comprehensiveness, with extremely valuable footnotes and a useful list of the major publicists and their works; R. W. and A. J. Carlyle, *A History of Mediaeval Political Theory in the West* (6 vols., London, 1903-1936), indispensable for its generous documentation and often useful for careful if unimaginative interpretation—the earlier volumes are in general more satisfying than the later; Charles H. McIlwain,

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*The Growth of Political Thought in the West* (New York, 1932), a work of masterly scholarship, rich in insight, significant for nearly all topics. Besides these, the student will find value in George H. Sabine, *A History of Political Theory* (rev. ed., New York, 1950), chs. XI–XVI, a recent summary useful for keen analysis in a broad philosophical context; F. J. C. Hearnshaw, ed., *The Social and Political Ideas of Some Great Mediaeval Thinkers* (London, 1923) and *The Social and Political Ideas of Some Great Thinkers of the Renaissance and Reformation* (London, 1925), collections of essays, of uneven value, by particular authors on particular publicists; among older works, the following are still worth consulting on certain points: Hermann Rehm, *Geschichte der Staatsrechtswissenschaft* (Freiburg, 1896); William A. Dunning, *History of Political Theories, Ancient and Mediaeval* (New York, 1902); Reginald Lane Poole, *Illustrations of the History of Mediaeval Thought and Learning* (2nd rev. ed., London and New York, 1920); others might be added.

### II. BACKGROUND

For the history of the events and institutional developments which formed part of the context of medieval political thought, the student must find elsewhere the bibliography appropriate to his needs. Some material essential to an understanding of the intellectual context of the medieval publicists can be listed here.

ARISTOTLE: Aristotle's political thought was known to medieval writers especially through the Latin translations of the *Politics* and the *Nichomachean Ethics* made by William of Moerbeka in the later thirteenth century; familiarity with William's text is essential to any intensive study of the thought of the later Middle Ages. The best edition of the former is that included in the 1872 edition of Franz Susemihl, *Aristotelis Politicorum Libri Octo*; the texts of both are also included, with Aquinas's commentaries, in the Parma edition of Aquinas's works (1852 ff.), vol. XXI. Good modern translations of Aristotle's philosophical and political works, such as those of the Loeb Classical Library, will help less specialized students to appreciate the impact of Aristotle on medieval political speculation. Ernest Barker's translation of *The Politics of Aristotle* (Oxford, 1946) has an excellent introduction; for other modern commentary, see ch. III of McIlwain, *op. cit.*, and the references cited there. On the influence of Aristotle on medieval political thought, see Georg von Hertling, *Zur Geschichte der aristotelischen Politik im Mittelalter* (Munich, 1914); Martin Grabmann, *Studien über den Einfluss der aristotelischen Philosophie auf die mittelalterlichen Theorien über der Verhältnis von Kirche und Staat* (Munich, 1934), a book with a suggestive thesis.

ROMAN LAW: The standard text of the *Corpus Juris Civilis* is that edited



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by Paul Krueger, Theodore Mommsen, *et al.* (3 vols., Berlin, 1928). Sabine, *op. cit.*, p. 173, gives a bibliography that will serve to orient the reader in the characteristic ideas of Roman jurisprudence. The standard history of the influence of Roman law in the Middle Ages is still C. F. Savigny, *Geschichte des römischen Rechts im Mittelalter* (7 vols., 2nd ed., Heidelberg, 1834ff.); Paul Vinogradoff, *Roman Law in Mediaeval Europe* (2nd ed., Oxford, 1929) is a useful introduction. Carlyle, *op. cit.*, vol. II, collects many passages illustrating the concepts derived by the glossators from their study of Roman law.

THE FATHERS: For the patristic sources of medieval thought, the student will depend for texts on the great collection of Migne, *Patrologiae Cursus Completus, Series Latina* (1844ff.) or on the useful selections and commentary in Carlyle, *op. cit.*, vol. I, pt. III. The best English translation of Augustine's *City of God* is that by Marcus Dods (latest ed., New York, 1948). Augustine's political ideas are variously interpreted; some useful studies are: J. N. Figgis, *The Political Aspects of St. Augustine's 'City of God'* (London, 1921); Bernard Roland-Gosselin, *La morale de saint-Augustin* (Paris, 1925); Gustave Combès, *La doctrine politique de St. Augustin* (Paris, 1927); Étienne Gilson, *Introduction à l'étude de Saint-Augustin* (Paris, 1929), ch. IV. Ernst Bernheim, *Mittelalterliche Zeitanschauung in ihrem Einfluss auf Politik und Geschichtsschreibung* (Tübingen, 1918), pp. 195-233, emphasizes the influence of Augustine on medieval theories of the relation of *regnum* and *sacerdotium*; H. X. Arquillière, *L'Augustinisme politique* (Paris, 1934), modifies Bernheim's thesis.

THE GERMANIC TRADITION AND THE EARLIEST MEDIEVAL THEORIES: McIlwain, *op. cit.*, pp. 167 ff., is a good introduction to some of the concepts brought into medieval thought by the Germanic tradition. To the references cited there should be added a book of major importance: Fritz Kern, *Gottesgnädentum und Widerstandsrecht im früheren Mittelalter* (Leipzig, 1914); this, together with a significant essay of Kern's, but without most of Kern's valuable notes, has been translated by S. B. Chrimes as *Kingship and Law in the Middle Ages* (Oxford, 1939). Monroe Smith, *The Development of European Law* (New York, 1928), is a convenient handbook to the interweaving of Germanic tradition, feudalism, and Roman law in the shaping of medieval private law. Carlyle, *op. cit.*, vol. I, pt. IV, gathers together material illustrating the political thought of the ninth century; vol. III, pt. I, material illustrating feudal concepts. Edward Jenks, *Law and Politics in the Middle Ages* (New York, 1898) is an old but still very readable analysis with emphasis on early concepts.

SCHOLASTICISM: A good deal of medieval political writing cannot be understood without some knowledge of the categories and controversies of

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scholastic philosophy. Standard works are Maurice de Wulf, *Histoire de la philosophie médiévale* (2 vols., 6th ed., Paris, 1934-1937; tr. from an earlier edition by E. C. Messenger as *History of Mediaeval Philosophy*, 2 vols., 3rd ed., London and New York, 1935-1938); Étienne Gilson, *La philosophie au moyen âge* (Paris, 1930). Helpful introductions on a less technical level are de Wulf, *Philosophy and Civilization in the Middle Ages* (Princeton, 1922); Gilson, *Reason and Revelation in the Middle Ages* (New York, 1938). There is a very useful glossary of technical terms in vol. II. of Richard P. McKeon, ed., *Selections from Mediaeval Philosophers* (2 vols., New York, 1929).

### III. SOME COLLECTIONS OF DOCUMENTS

The most important documentary sources for the study of medieval political thought will be listed, in relation to particular periods and writers, in section IV below, but a few collections of wide chronological scope may be noted here. Two old compilations containing many important works are: Melchior Goldast, ed., *Monarchia s. Romani Imperii sive Tractatus de Jurisdictione Imperiali, Regia, et Pontificia seu Sacerdotali; Deque potestate Imperatoris sive Regis, ac Papae, cum distinctione utriusque Regiminis, Politici et Ecclesiasticae* (3 vols., Frankfort, 1668), vols. I, II; Simon Schard, ed., *De Jurisdictione Autoritate et Praeeminentia Imperiali ac Potestate Ecclesiastica* (Basel, 1566). A very useful modern collection of extracts, chiefly from official documents, is Carl Mirbt, *Quellen zur Geschichte des Pöpstums und des römischen Katholizismus* (4th ed., Tübingen, 1924). Karl Zeumer, *Quellensammlung zur Geschichte der deutschen Reichsverfassung* (Leipzig, 1904), has materials, especially imperial documents, for the struggle between popes and emperors. Gieseler's *Compendium of Ecclesiastical History* (Eng. tr., Edinburgh, 1853) includes substantial extracts from medieval publicists dealing with ecclesiastical theory.

The standard text of the *Corpus Juris Canonici* is ed. Emil Friedberg (2 vols., Leipzig, 1879-1881). Adolphe Tardif, *Histoire des sources du droit canonique* (Paris, 1887) is a useful handbook.

### IV. A CHRONOLOGICAL LIST OF THE WRITINGS OF THE MORE IMPORTANT MEDIEVAL PUBLICISTS; SECONDARY WORKS ON PARTICULAR PUBLICISTS OR PARTICULAR PERIODS

Most of the secondary works that focus on a particular period deal primarily with issues of church-state relations; the student interested in other topics is reminded that the bibliography given below must be supplemented by references to topical studies given in footnotes to the chapters above.

**THE INVESTITURE STRUGGLE:** The best edition of the Register of Gregory VII is Erich Caspar, ed., *Das Register Gregors VII, MGH, Epistolae Selectae*

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(2 vols., Berlin, 1920-1922). The important pamphlets of the period are collected and edited with valuable introductions in *MGH, Libelli de Lite Imperatorum et Pontificum saeculis XI et XII conscripti* (3 vols., Hanover, 1891-1897). Important secondary works, besides Carlyle, *op. cit.*, vol. IV, and Bernheim, *op. cit.*, pt. III, are: Carl Mirbt, *Die Publizistik im Zeitalter Gregors VII* (Leipzig, 1894); Pierre Imbart de la Tour, *L'Évolution des idées sociales du xi<sup>e</sup> au xiii<sup>e</sup> siècle, Questions d'histoire sociale et religieuse* (Paris, 1907), pp. 225-266, a summary based largely on Mirbt; Augustin Fliche, *La réforme grégorienne* (3 vols., Louvain, 1924-1937) and *La querelle des investitures* (Paris, 1946); H. X. Arquillière, 'Sur la formation de la théocratie pontificale,' in *Mélanges d'histoire du moyen âge offerts à M. Lot* (Paris, 1925), pp. 1-24, and *Saint Grégoire VII: essai sur sa conception du pouvoir pontificale* (Paris, 1934); Élie Voosen, *Papauté et pouvoir civil à l'époque de Grégoire VII* (Gembloux, 1927).

On Manegold of Lautenbach, see F. W. B. Giesebrecht, *Magister Manegold von Lautenbach* (Munich, 1868); on the *York Tractates*, Heinrich Boehmer, *Kirche und Staat in England und in der Normandie im XI und XII Jahrhundert* (Leipzig, 1899), pp. 177-266.

**TWELFTH-THIRTEENTH CENTURIES:** The transition from the thought of the period of the investiture struggle to that of the era of Boniface VIII is treated in Albert Hauck, *Der Gedanke der päpstlichen Weltherrschaft bis auf Bonifaz VIII* (Leipzig, 1904), and Jean Rivière, *Le problème de l'église et de l'état au temps de Philippe le Bel* (Louvain, 1926), intro. Carlyle, *op. cit.*, vol. V, is particularly useful for papal claims and canonist commentary, whereas Rivière gives special attention to theologians. The canonist theory of the thirteenth century is analysed, unfortunately not chronologically, in Walter Ullmann, *Medieval Papalism: The Political Theories of the Medieval Canonists* (London, 1949). Georges de Lagarde, *La naissance de l'esprit laïque au déclin du moyen âge*, vol. III, *Secteur social de la scolastique* (Saint-Paul-Trois-Châteaux, 1942), analyses scholastic concepts relevant to political thought. See also J. R. Strayer, 'The Laicization of French and English Society in the Thirteenth Century,' *Speculum*, XV (1940), 76-86.

**JOHN OF SALISBURY:** The standard edition of the *Policraticus* is ed. C. C. J. Webb (Oxford, 1909). John Dickinson, *The Statesman's Book of John of Salisbury* (New York, 1927), is a translation of the sections most important for political theory (bks. 4, 5, 6, and selections from bks. 7, 8), with an excellent introduction, valuable also on the general thought of the period. Further bibliography on John of Salisbury will be found in Dickinson's notes; two later works may be added: C. C. J. Webb, *John of Salisbury* (London, 1932); Hans Liebeschütz, *Mediaeval Humanism in the Life and Writings of John of Salisbury* (London, 1950).

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OTHER TEXTS: The often-quoted *De Consideratione* of Bernard of Clairvaux is in Migne, *op. cit.*, vol. CLXXXII; the writings of Innocent III, *ibid.*, vols. CCXIV–CCXVII. Zeumer, *op. cit.*, has many of the documents of the struggle between the Hohenstaufens and the papacy. There are a number of old editions but no modern ones of the works of the great canonists: e.g., Sinibaldus Fliscus (Innocent IV), *Apparatus ad Quinque Libros Decretalium*; Henricus de Segusio (Hostiensis), *Summa super Titulis Decretalium*; Wilhelmus Durandus, *Speculum Juris*; see Tardif, *op. cit.*

THOMAS AQUINAS: Bibliographical guides to the works of Aquinas are Martin Grabmann, *Die echten Schriften des hl. Thomas von Aquin* (Münster i. W., 1920), and P. F. Mandonnet and J. Destrez, *Bibliographie thomiste* (Kain, Belgium, 1921). There are several editions of Aquinas's works, more or less complete. The comprehensive edition published in Parma (1852 ff.) may be cited; also the superior Leonine edition (Rome, 1882 ff.), which is still incomplete.

Important for an understanding of Aquinas's political thought are his *Commentum in IV Libros Sententiarum Magistri Petri Lombardi*, in *Opera* (Parma), vols. VI–VII or (Paris), vol. VIII; his commentaries on the *Politics* and *Ethics* of Aristotle, although containing few contributions of his own thought, in *Opera* (Parma), vol. XXI (Aquinas's commentary on the *Politics* ends with bk. 3, ch. 6, and was continued by his pupil Peter of Auvergne); parts of the *Summa contra Gentes* and the *Summa Theologiae*, especially 1a 2ae, qs. 90–97, on law, and 2a 2ae, qs. 57–61, on right and justice (these two works are best read in the Leonine edition; there are also rather mechanical English translations, by the Fathers of the English Dominican Province, of the *Summa contra Gentes*, 5 vols., London, 1923–1929, and of the *Summa Theologiae*, 22 vols., 2nd ed., London, 1918–1930); his little *De Regimine Judaeorum ad Ducissam Brabantiae*, in *Opera* (Parma), vol. XVI; and his *De Regimine Principum ad Regem Cypri*, of which bk. 1 and the first four chapters of bk. 2 are by Aquinas, the remainder presumably by Tholommeo of Lucca. There are a number of editions of this latter work; it was often printed separately; it is in vol. XVI of *Opera* (Parma), pp. 224 ff.; in *S. Thomae Aquinatis Opuscula Selecta*, vol. III (Paris, 1881), pp. 254–429; the best text is in *Opuscula Omnia*, ed. Mandonnet (5 vols., Paris, 1927), vol. I, pp. 312 ff. (the *De Regimine Judaeorum* can be found *ibid.*, pp. 488 ff.); it has also been published, with the *De Regimine Judaeorum*, ed. Joseph Mathis (2nd rev. ed., Turin, 1948). There is an English translation, covering only the part written by Aquinas, by G. B. Phelan: *On the Governance of Rulers* (rev. ed. with intro. and notes by I. T. Eschmann, Toronto, Pontifical Institute of Medieval Studies, 1949).

An excellent collection of significant passages from Aquinas's work is



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*Thomas Aquinas, Selected Political Writings*, ed. with a valuable introduction by Alexander Passerin d'Entrèves and tr. J. G. Dawson (Oxford, 1948).

For a biography of Aquinas, see Martin Grabmann, *Thomas Aquinas: His Personality and Thought*, tr. V. Michel (New York, 1928); for his general philosophy, Étienne Gilson, *Le thomisme* (Paris, 1927), tr. E. Bullough as *The Philosophy of St. Thomas Aquinas* (Cambridge, 1929).

Commentaries on Aquinas's political thought or particular aspects of it are multitudinous and of widely diverse value. McIlwain's brief treatment, *op. cit.*, pp. 235-236, 323-335, seems to me particularly sound. Other discussions that I have found helpful are Robert Bellarmine, *De Summo Pontifico*, bk. 5, ch. 5, in *Opera Omnia* (Venice, 1721-1728), vol. I; Carlyle, *op. cit.*, vol. V, pp. 348-354; Odon Lottin, *Le droit naturel chez saint Thomas et ses prédécesseurs* (Bruges, 1926); Bernard Roland-Gosselin, *La doctrine politique de Saint Thomas d'Aquin* (Paris, 1928); Robert Linhardt, *Die Sozial-Prinzipien des hl. Thomas von Aquin* (Freiburg im Breisgau, 1932); Martin Grabmann, *Studien über den Einfluss der aristotelischen Philosophie . . .*; A. Passerin d'Entrèves, the introduction mentioned above and *The Medieval Contribution to Political Thought* (Oxford, 1939), ch. II; Georges de Lagarde, *op. cit.*, vol. III, ch. III.

THE LAW BOOKS: On the collections of national and local law that began to appear in the eleventh century, and in greater numbers from the thirteenth century, see McIlwain, *op. cit.*, pp. 185 ff., and the references given there. Most important for political theory were Henry de Bracton, *De Legibus et Consuetudinibus Angliae*; Jean d'Ibelin d'Arsur, *Assises de Jérusalem*; and Philippe de Beaumanoir, *Coutumes de Beauvaisis*, all of the later thirteenth century. The standard edition of Bracton is ed. George Woodbine (4 vols., New Haven, 1915-1942); an older edition by Travers Twiss (6 vols., London, 1878-1883) is unsatisfactory but useful as including an English translation. Some important studies of Bracton are F. W. Maitland, ed., *Select Passages from the Works of Bracton and Azo*, Selden Society Publications, VIII (1895); Paul Vinogradoff, 'The Roman Elements in Bracton's Treatise,' in *The Collected Papers of Paul Vinogradoff* (Oxford, 1928), vol. I, pp. 237 ff.; C. H. McIlwain, *Constitutionalism Ancient and Modern* (Ithaca, 1940), ch. IV; Fritz Schulz, 'Bracton on Kingship,' *English Historical Review*, LX (1945), 136-177. The *Assises de Jérusalem* is ed. A. A. Beugnot (2 vols., Paris, 1841-1843) and discussed by Maurice Grandclaude, *Étude critique sur les livres des Assises de Jérusalem* (Paris, 1923). The *Coutumes de Beauvaisis* is ed. A. Salmon (2 vols., Paris, 1899-1900); see P. von Wetter, 'Le droit romain et Beaumanoir,' in *Mélanges Fitting* (Montpellier, 1908), vol. II.

THIRTEENTH-FOURTEENTH CENTURIES: The most helpful general secondary works on the thought of the late thirteenth century and the age of Boniface

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VIII are Heinrich Finke, *Aus den Tagen Bonifaz VIII* (Münster i. W., 1902), useful on certain points; C. S. N. Woolf, *Bartolus of Sassoferato* (Cambridge, 1903), a penetrating study, which builds up a context for Bartolus's thought on the empire through analysis of preceding trends and theories; Richard Scholz, *Die Publizistik zur Zeit Philipps des Schönen und Bonifaz VIII* (Stuttgart, 1903), an authoritative factual statement; Rivière, *op. cit.*, a sensitive and scholarly analysis; Carlyle, *op. cit.*, vol. V, *passim*; Georges de Lagarde, *op. cit.*, vol. I, *Bilan du xiii<sup>e</sup> siècle* (1934), the first volume of a brilliant and ambitious work, which tends to overstate its general thesis of a rapid development of 'l'esprit laïque' in the later Middle Ages, but which is nevertheless of major importance.

DE PREROGATIVA ROMANI IMPERII: The first modern edition of this treatise, attributed to Jordan of Osnabrück, is G. Waitz, ed., *Das Jordanus von Osnabrück Buch über das Römische Reich (Abhandlungen der königlichen Gesellschaft der Wissenschaften zu Göttingen, vol. XIV, Göttingen, 1868)*. A more recent edition distinguishes the work of two authors: Herbert Grundmann, ed., *Alexander von Roes, De Translatione Imperii, und Jordanus von Osnabrück, De Prerogativa Romani Imperii* (Leipzig, 1930); see Grundmann's preface for the problem of authorship and date.

THOLOMMEO OF LUCCA: The portion of Aquinas's *De Regimine Principum* presumed to be by Tholommeo (bk. 2, chs. 5 ff.; bks. 3, 4) is included in most editions of that treatise; for its date, see Bernhard Schmeidler, ed., *Die Annalen des Tholomeus von Lucca, MGH, Scriptores, N. S., vol. VIII* (Berlin, 1930), pref., p. 31, n. 2. Also attributed to Tholommeo is the *Determinatio Compendiosa de Jurisdictione Imperii*, ed. Marius Kramer (Hanover and Leipzig, 1909); for its date and authorship, see Kramer's preface and Rivière, *op. cit.*, pp. 159-160. Kramer's edition also includes Tholommeo's *De Origine et Statu Romani Imperii*.

THE AGE OF BONIFACE VIII, MISCELLANEOUS TEXTS: The largest collection of documents for the controversy between Boniface and Philip is the collection added as *preuves* to Pierre Dupuy, *Histoire du différend d'entre le pape Boniface VIII et Philippe le Bel Roy de France* (Paris, 1655); there are others in Adrien Baillet, *Histoire des démeslez du Pape Boniface VIII avec Philippe le Bel Roy de France* (Paris, 1718), and in *Les Registres de Boniface VIII*, ed. Digard, Faucon, and Thomas (Paris, 1884). Of the more important controversial treatises and pamphlets, *Antequam Essent Clerici* and *Rex Pacificus (Quaestio de Potestate Papae)* are in Dupuy, *op. cit.*, pp. 21-23, 663-683; the *Disputatio inter Clericum et Militem* is in Schard, *De Jurisdictione . . .*, pp. 677-687, and in Goldast, *Monarchia . . .*, vol. I, pp. 13-18, where it is attributed to Occam; Henry of Cremona, *De Potestate Papae* and *Non Ponant Laici*, will be found in Scholz, *op. cit.*, pp. 459-471, 475-476; the *Quaestio de Utraque Potestate (Quaestio*

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in *Utramque Partem*) is in Goldast, *op. cit.*, vol. II, pp. 96–107, surprisingly assigned to Aegidius Romanus; a cut text of the anti-papal *Glossa in Unam Sanctam* is ed. Finke, *op. cit.*, appendix, pp. c–cxvi.

**ÆGIDIUS ROMANUS:** There is no modern edition of Aegidius's important early treatise, *De Regimine Principum*; a French version dating from the late thirteenth or early fourteenth century was published in 1899: *Li livres du gouvernement des rois*, ed. S. P. Molenaer (New York); his introduction gives an account of the book and Appendix C lists the old editions of the Latin text. There are two modern editions of Aegidius's *De Ecclesiastica Potestate*. That ed. Giuseppe Boffito and Giuseppe Ugo Oxilia (Florence, 1908) is a poor edition based on a single MS, but the editors' introduction is useful; Richard Scholz's edition (Weimar, 1929) is standard. Aegidius's *De Renuntiatione Papae* is in Rocaberti, *Bibliotheca Maxima Pontificia*, vol. II, pp. 1–64.

**JAMES OF VITERBO:** The *De Regimine Christiano* was first printed in an edition based on a single MS, ed. G. L. Perugi (Rome, 1914). The critical edition is that of H. X. Arquillière, *Le plus ancien traité de l'église, Jacques de Viterbo, De Regimine Christiano (1301–1302)* (Paris, 1926), with an important introduction.

**JOHN OF PARIS:** The *Tractatus de Potestate Regia et Papali* is in Schard, *op. cit.*, pp. 142–224, and Goldast, *op. cit.*, vol. II, pp. 108–147, but these unsatisfactory texts have been superseded by the critical edition published by Jean Leclercq as an appendix to his careful study of the treatise: *Jean de Paris et l'ecclésiologie du xiii<sup>e</sup> siècle* (Paris, 1942).

**PIERRE DUBOIS:** *De Recuperatione Terre Sancte* is ed. C. V. Langlois (Paris, 1891), with a useful introduction; cf. F. M. Powicke, 'Pierre Dubois, a Mediaeval Radical,' in T. F. Tout and J. Tait, eds., *Historical Essays* (Manchester, 1907), pp. 169–191; Eileen E. Power, 'Pierre Dubois and the Domination of France,' in Hearnshaw, ed., *The . . . Ideas of Some Great Mediaeval Thinkers*, pp. 139–166.

**EARLY CONCILIARISM:** An important document for the origins of conciliarism in this period is the *Tractatus de Modo Generalis Concilii Celebrandi* by William Durand the Younger (Paris, 1545); important secondary studies of the topic are H. X. Arquillière, 'L'Appel au concile sous Philippe le Bel et la genèse des théories conciliaires,' *Revue des questions historiques*, N. S., XLV (1911), 23–55, and 'L'Origine des théories conciliaires,' *Séances et travaux de l'académie des sciences morales et politiques*, CLXXV (1911), 581ff.; J. T. McNeill, 'The Emergence of Conciliarism,' in J. L. Cate and E. N. Anderson, eds., *Medieval and Historiographical Essays in Honour of James Westfall Thompson* (Chicago, 1938), pp. 292ff.

**ENGELBERT OF ADMONT:** *De Ortu et Fine Romani Imperii* was printed in Basel,

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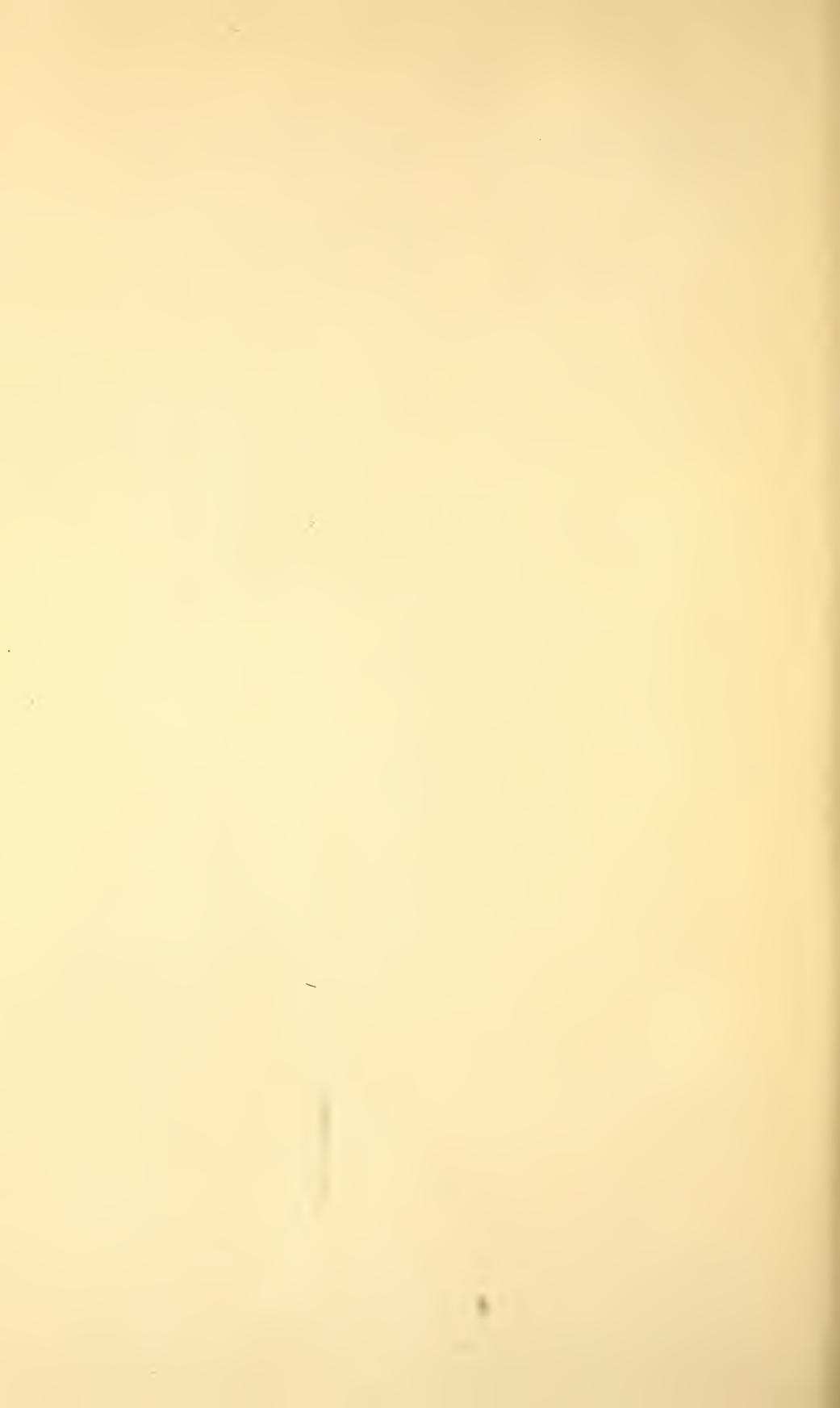
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